PHILIPPINE REPORTS

VOL. 582

JULY 28, 2008 TO JULY 31, 2008

VOLUME 582

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 28, 2008 TO JULY 31, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

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

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

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

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

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

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

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

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5033. July 28, 2008]

MARY JANE D. VELASCO, *complainant, vs.* **ATTY. CHARLIE DOROIN and ATTY. HECTOR CENTENO,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT. — Rule 1.01 of the Code of Professional Responsibility states that: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. In ***Marcelo v. Javier***, we reminded the members of the legal profession that: A lawyer shall at all times uphold the integrity and dignity of the legal profession. The trust and confidence necessarily reposed by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. Generally speaking, a lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, **nothing should be done**

by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behaviour and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney.

2. ID.; ID.; THE COMPLAINED ACTUATIONS OF RESPONDENT LAWYERS CONSTITUTE A BLATANT VIOLATION OF THE LAWYER'S OATH TO UPHOLD THE LAW AND BASIC TENETS OF THE CODE OF PROFESSIONAL RESPONSIBILITY THAT NO LAWYER SHALL ENGAGE IN DISHONEST CONDUCT. — In disbarment proceedings, the burden of proof generally rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. In the case at bar, complainant claims that respondent lawyers forged the deed of sale and forced her to sign the deed of extrajudicial settlement by explaining to her that it was "in accordance with law." The complained actuations of the respondent lawyers constitute a blatant violation of the lawyer's oath to uphold the law and the basic tenets of the Code of Professional Responsibility that no lawyer shall engage in dishonest conduct. Elementary it is in succession law that compulsory heirs like the widowed spouse shall have a share in the estate by way of legitimes and no extrajudicial settlement can deprive the spouse of said right except if she gives it up for lawful consideration, but never when the spouse is not a party to the said settlement. And the Civil Code reminds us, that we must "give every man his due." The guilt of the respondent lawyers is beyond dispute. They failed to answer the complaint filed against them. Despite due notice, they failed to attend the disciplinary hearings set by the IBP. Hence, the claims and allegations of the complainant remain **uncontroverted**. In ***Ngayan v. Tugade***, we ruled that "[a lawyer's] failure to

answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court."

3. ID.; ID.; PENALTY IMPOSED. — The Court is mindful that disbarment is a grave penalty. Considering that the license to practice law, though it is not a property right, sustains a lawyer's primary means of livelihood and to strip someone of such license amounts to stripping one of a career and a means to keep himself alive, we agree with the modification submitted by the Integrated Bar of the Philippines that an indefinite suspension would be the more appropriate penalty on Atty. Charlie Doroin. However, we cannot be as lenient with Atty. Hector Centeno who, aside from committing a dishonest act by depriving a person of her rightful inheritance, also committed a criminal offense when he falsificated a public document and thereafter absconded from the criminal proceeding against him after having posted bail. We also take this opportunity to remind the Integrated Bar of the Philippines and their regional and city chapters to maintain an updated record of the office and residence addresses of their members to help facilitate looking for lawyers. As officers of the court, lawyers should be readily available upon the Court's beckoning.

APPEARANCES OF COUNSEL

Quintin P. Alcid for respondents.

D E C I S I O N

***PER CURIAM*:**

This case refers to a disbarment complaint filed by Mary Jane D. Velasco on March 31, 1999, against respondent lawyers for forgery and falsification constitutive of malpractice.[1]

---

[1] *Rollo*, p. 2; see Affidavit-Complaint, pp. 1-3.

On June 21, 1999, the Court's Second Division required the respondent lawyers to comment on the complaint within (10) days from notice.[2]

On August 24, 1999, Atty. Quintin P. Alcid, counsel for respondents, filed a Motion for Extension to File Comment praying that an extension of sixty (60) days from August 16, 1999 be given to them to file their comment.[3]

On October 4, 1999, the Court granted the Motion for Extension with a warning that the same shall be the last and no further extension will be given.[4]

The respondent lawyers failed to file their comment.

On June 20, 2001, the Court ordered respondent lawyers and their counsel to show cause why they should not be disciplinarily dealt with or held in contempt for such failure and to comply with the resolution requiring the comment. Copies of the resolution dated June 20, 2001 were returned unserved from Atty. Alcid and Atty. Centeno with notations "party out/ unknown at/party moved out" and "moved out." Atty. Doroin received the said resolution on July 27, 2001.[5]

On April 17, 2002, complainant was required to submit the correct addresses of Atty. Alcid and Atty. Centeno, while Atty. Charlie Doroin was fined Php 500.00 for failure to comply with the show cause resolution dated June 20, 2001 and was ordered to submit his comment.[6]

Complainant failed to comply with the directive of the Court.

On July 23, 2003, the Court required the complainant to show cause why she should not be disciplinarily dealt with for her non-compliance with the said directive and to submit her

---

[2] *Rollo,* p.19.

[3] *Rollo,* p. 20.

[4] *Rollo,* p. 24.

[5] *Rollo,* pp. 29-31.

[6] *Rollo,* p. 32.

compliance within ten (10) days from notice. In the same resolution, the fine imposed on Atty. Charlie Doroin was increased from Php 500.00 to Php 1,000.00 for his failure to file his comment on the complaint as required by the Court, or to suffer imprisonment of five (5) days in case he fails to pay and to submit his comment on the complaint within ten (10) days from notice.[7]

In a report dated August 2, 2004, the Clerk of Court informed the Court that respondent Atty. Doroin paid the fine of Php 1,000.00. However, Atty. Doroin still failed to submit the comment on the administrative complaint required of him and has not complied with the show cause resolution dated April 17, 2002 by submitting the correct addresses of Atty. Quintin P. Alcid and respondent Atty. Hector Centeno.[8]

In a Manifestation submitted June 23, 2005, the complainant submitted the addresses of Atty. Charlie Doroin and Atty. Hector Centeno as well as a copy of a Special Power of Attorney authorizing Mr. Juanito C. Perez to prosecute the instant case.[9]

On July 27, 2005, the Court issued a resolution noting the compliance of the complainant as well as the latter's manifestation and referred the case to the Integrated Bar of the Philippines for investigation, report and recommendation within ninety (90) days from receipt of the record.[10]

On October 3, 2005, the Integrated Bar of the Philippines through Commissioner Rebecca Villanueva Maala issued a Notice of Mandatory Conference/Hearing to the parties to the case scheduled on October 26, 2005 with a strict note that "[n]on-appearance by any of the parties shall be deemed a waiver of their right to participate in further proceedings."[11]

---

[7] *Rollo*, p. 36.

[8] *Rollo*, p. 41.

[9] *Rollo*, p. 43.

[10] *Rollo*, p. 76.

[11] Notice of Mandatory Conference/Hearing, dated October 3, 2005.

On October 26, 2005, only Mr. Juanito Perez, attorney-in-fact of the complainant, together with his counsel Atty. Andres Villaruel, Jr. appeared. As respondents Atty. Charlie Doroin and Atty. Hector Centeno had not filed their comment, they were directed to submit it within (10) days from receipt of notice. The hearing of the case was reset on November 30, 2005.[12]

On November 30, 2005, again, only Mr. Juanito Perez, attorney-in-fact of the complainant, together with his counsel, Atty. Villaruel, appeared. The notices sent to respondents were returned to the Commission on Bar Discipline with a notation "RTS-Moved." As respondents had not filed their comment on the complaint, they were declared in default. In an Order dated November 30, 2005, Commissioner Rebecca Villanueva Maala submitted her report and recommendation, *viz*.[13]

The Commission on Bar Discipline reported that:

x x x x x x x x x

In her Affidavit-Complaint, complaint (sic) alleged that she was appointed as Administratrix in Special Proceedings Case No. Q-96-27628 pending consideration before the Regional Trial Court, Quezon City, Branch 87, entitled "In the matter of the Settlement of the Estate of the Late Eduardo Doroin, Monina E. Doroin, petitioner." The deceased, Eduardo Doroin, died on 21 January 1996, in Papua New Guinea. In this Special Proceedings case, respondents were collaborating counsels for Oppositor, Josephine Abarquez.

On 21 March 1996, Atty. Doroin fooled complainant by deceitful means into making her sign an Extra-Judicial Settlement and Deed of Partition, allotting complainant the sum of ₱1,216,078.00 giving the paramour of complainant's father, Josephine Abarquez, the share of ₱7,296,468.00 and also allotting complainant's two (2) alleged illegitimate brothers and an alleged illegitimate sister, a similar sum of ₱1,216,075.00 each alleging that such sharing is in accordance with law. But no share was assigned to complainant's mother, who was the legal wife of Dr. Eduardo Doroin.

To partially satisfy complainant's share of Php 1,216,078.00, Atty. Doroin required complainant to sign a paper which was an alleged

[12] IBP Commission on Bar Discipline, Order dated October 26, 2005.

[13] IBP Commission on Bar Discipline, Order dated November 30, 2005.

Confirmation of Authority to Sell the property of complainant's father located at Kingspoint subdivision, Bagbag, Novaliches, Quezon City, covered by TCT No. 34885, Complainant told Atty. Doroin that she will first consult a lawyer regarding the legality of the said Confirmation of Authority to Sell before she signs the same. Eventually, she was not able to sign the said Confirmation because complainant's lawyer, Atty. Marapao, failed to confer and negotiate with Atty. Doroin regarding the same.

When the complainant visited the lot situated at Kingspoint Subdivision sometime in June 1996, there was no house constructed thereon, but when she visited it again on January 1999, there was already a four-door townhouse constructed. Complainant was informed by the caretaker at the site that the owner is one Evangeline Reyes-Tonemura. Complainant also learned later on that the property, which was one of the properties submitted to the Court handling the Special Proceedings case in the Inventory of Property dated 3 April 1996, was sold by Atty. Doroin to Evangeline Reyes-Yonemura [sic], by forging the signature of complainant's late father. Atty. Hector B. Centeno, a Notary Public of Quezon City, knowing that complainant's father was already dead as of 21 January 1996, made it appear in the said Deed of Absolute Sale, that complainant's father appeared before him in Quezon City on 17 January 1997.

Records show that a case for Falsification of Public Document was filed against respondent Atty. Hector Centeno before the Metropolitan Trial Court, Quezon City, Branch 39, docketed as Criminal Case No. 104869. Atty. Centeno was arraigned on 12 September 2001 and pleaded "not guilty." After the arraignment, Atty. Centeno did not anymore appeared [sic] in court and jumped bail.[14]

The Commission found that respondents violated Rule 1.01, Canon 1 of the Code of Professional Responsibility when they caused "extreme and great damage to the complainant."[15] The Commissioner also noted that the failure of the respondents to answer the complaint for disbarment despite due notice on several occasions and to appear on the scheduled hearing set showed

---

[14] *Rollo*, pp. 91-92; IBP Commission on Bar Discipline's *Report and Recommendation* at 2-4, dated February 10, 2006.

[15] *Id.* at 4.

"flouting resistance to lawful orders of the court and illustrates despiciency for his oath of office as a lawyer, which deserves disciplinary sanction."[16] The Commissioner recommended that the respondent lawyers be disbarred.

On November 18, 2006, the Board of Governors of the Integrated Bar of the Philippines adopted and approved the Report and Recommendation of the Commission on Bar Discipline with the modification that respondent lawyers be suspended indefinitely instead of being disbarred.

The Notice of Resolution and the Report and Recommendation by the Integrated Bar of the Philippines, were submitted to the Court, through the Director for Bar Discipline, in a transmittal letter dated January 22, 2007.

The issue before us is whether Atty. Charlie Doroin and Atty. Hector Centeno are guilty of violating their lawyer's oath and Rule 1.01, Canon 1 of the Code of Professional Responsibility which would merit their disbarment.

We agree with the findings of the Board of Governors of the IBP, but modify the penalty to be imposed on respondent Atty. Hector Centeno.

Rule 1.01 of the Code of Professional Responsibility states that:

"A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[17]

Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large,[18]

---

[16] *Id.* citing *Ngayan v. Tugade*, A.C. No. 2490, February 7, 1991, 193 SCRA 779, 784 (the Court in this case ratiocinated that such despiciency was a violation of §3, Rule 138 of the Rules of Court or the Lawyer's Oath of Office, that he shall, among others uphold the Constitution, obey the laws and the lawful orders of authorities.).

[17] Rule 1.01, Canon 1, Code of Professional Responsibility.

[18] *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406.

and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.[19] In ***Marcelo v. Javier***,[20] we reminded the members of the legal profession that:

> A lawyer shall at all times uphold the integrity and dignity of the legal profession. The trust and confidence necessarily reposed by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. Generally speaking, a lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, **nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.**
>
> **It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behaviour** and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney.[21]

In disbarment proceedings, the burden of proof generally rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[22]

In the case at bar, complainant claims that respondent lawyers forged the deed of sale and forced her to sign the deed of extrajudicial settlement by explaining to her that it was "in accordance with law."

---

[19] *Ere v. Rubi*, A.C. No. 5176, December 14, 1999, 320 SCRA 617.

[20] A.C. No. 3248, September 18, 1992, 214 SCRA 1.

[21] *Id.* at 13 (emphasis supplied).

[22] *Santos v. Dichoso*, A.C. No. 1825, August 22, 1978, 84 SCRA 622.

The complained actuations of the respondent lawyers constitute a blatant violation of the lawyer's oath to uphold the law and the basic tenets of the Code of Professional Responsibility that no lawyer shall engage in dishonest conduct. Elementary it is in succession law that compulsory heirs like the widowed spouse shall have a share in the estate by way of legitimes[23] and no extrajudicial settlement can deprive the spouse of said right except if she gives it up for lawful consideration, but never when the spouse is not a party to the said settlement.[24] And the Civil Code reminds us, that we must "give every man his due."[25]

The guilt of the respondent lawyers is beyond dispute. They failed to answer the complaint filed against them. Despite due notice, they failed to attend the disciplinary hearings set by the IBP. Hence, the claims and allegations of the complainant remain **uncontroverted**. In ***Ngayan v. Tugade,***[26] we ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting

---

[23] CIVIL CODE, Art. 887 which provides that:

Art. 887. The following are compulsory heirs:

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

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

(3) The *widow* or widower;

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

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

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

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

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

[24] See RULES OF COURT, Rule 74, §1 (on the proper procedure for extrajudicial settlement by agreement between heirs).

[25] CIVIL CODE, Art. 19.

[26] *Ngayan, supra* note 16.

resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court."[27]

The Court is mindful that disbarment is a grave penalty. Considering that the license to practice law, though it is not a property right, sustains a lawyer's primary means of livelihood and to strip someone of such license amounts to stripping one of a career and a means to keep himself alive, we agree with the modification submitted by the Integrated Bar of the Philippines that an indefinite suspension would be the more appropriate penalty on Atty. Charlie Doroin. However, we cannot be as lenient with Atty. Hector Centeno who, aside from committing a dishonest act by depriving a person of her rightful inheritance, also committed a criminal offense when he falsificated a public document and thereafter absconded from the criminal proceeding against him after having posted bail.

We also take this opportunity to remind the Integrated Bar of the Philippines and their regional and city chapters to maintain an updated record of the office and residence addresses of their members to help facilitate looking for lawyers. As officers of the court, lawyers should be readily available upon the Court's beckoning.

IN VIEW WHEREOF, Atty. Charlie Doroin is *SUSPENDED INDEFINITELY*, and Atty. Hector Centeno is hereby *DISBARRED.*

Let a copy of this resolution be furnished to the Bar Confidant and the Integrated Bar of the Philippines and also be placed on the personal records of the respondents.

SO ORDERED.

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

Azcuna and *Tinga, JJ.,* on official leave.

---

[27] *Id.* at 784.

EN BANC

[A.M. No. 04-10-296-MTCC. July 28, 2008]

REPORT ON THE ATTENDANCE IN OFFICE OF MR. GLENN B. HUFALAR, Municipal Trial Court in Cities, Branch 1, San Fernando City, La Union

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; ENTRIES IN THE DAILY TIME RECORD (DTR) ARE BASED ON THE ENTRIES MADE IN THE DAILY LOGBOOK OF ATTENDANCE. — We take judicial notice of the fact that in some government offices there are no bundy clocks. It has been a practice that, upon arrival at work and before proceeding to their respective workstations, employees would first sign their names at the logbook of attendance when they enter that office. It is only at the end of each month that employees would fill up their DTRs reflecting the entries earlier made in the logbook of attendance. In other words, the entries in the DTR are based on the entries made daily in the logbook of attendance.

2. ID.; ID.; ID.; ID.; RESPONDENT IS GUILTY OF DISHONESTY WHEN HE MADE FALSE ENTRIES IN HIS DTR'S WHICH DID NOT REFLECT THE ENTRIES HE MADE IN THE LOGBOOK OF ATTENDANCE. — Records show that there are discrepancies between respondent's DTRs and the court's logbook of attendance. A simple comparison of these two documents would reveal glaring discrepancies. The entries on arrival and departure in respondent's DTRs do not reflect the entries made in the logbook of attendance. Some entries in the logbook of attendance did not indicate the time of arrival or departure but the DTRs showed respondent incurring half days and declaring sick and vacation leaves for the months of September, November, and December 2003 as well as for the months of January and February 2004. Respondent's DTRs showed a consistent attendance of whole days indicating the arrival time at 8:00 a.m. and the departure time at 5:00 p.m. On certain days, there were notations of "½ day" on the column for undertime. As aptly observed by the OCA, there cannot be

a complete entry in the DTR of arrival and departure for one whole day in office with a notation of incurred half day for that same day. Stated otherwise, attendance in office could be whole day or half day but it could never be both whole day and half day on a single day. And even if respondent incurred half days, he should have indicated in his DTR whether these were in the morning or in the afternoon. Clearly, respondent is guilty of dishonesty when he made false entries in his DTRs which did not reflect the entries he made in the logbook of attendance. The unreported undertime is tantamount to falsification of DTRs. Each false entry in respondent's DTR constitutes falsification of official documents and gross dishonesty. Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. Dishonesty is a malevolent act that has no place in the judiciary.

3. ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL FROM SERVICE IS WARRANTED IN CASE AT BAR. — Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is classified as a grave offense punishable by dismissal even on a first offense. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in government service. It is indubitable that respondent's DTRs are evidently not representative of the truth. He should be punished by dismissal from the service. While in some cases, we have held that we do not hastily inflict such an extreme penalty of dismissal upon an erring employee, especially in cases where there are mitigating circumstances which could alleviate culpability, this is not so in the present case. Respondent has repeatedly defied and ignored the rules and directives despite the three memoranda issued by Bautista and the orders of Judge Dacumos and Judge Jaravata.

4. ID.; ID.; ID.; ID.; RESPONDENT'S FREQUENT ABSENCES PREJUDICED PUBLIC SERVICE. — Respondent likewise did not file any leave of absence for those days he was absent for a half day, or when on sick or vacation leave. Records also showed he did not file any leave of absence from 1 March 2004, and he was no longer reporting for work since 27 April

> 2004. There is no question that respondent prejudiced public service with frequent absences. His conduct certainly falls short of the standards prescribed by the Constitution for public officers and employees. A 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. Strict observance of official time is necessary to inspire public respect for the justice system, court officials and employees. We strongly emphasize this dictum to every person who has chosen to serve in the Judiciary: Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. x x x The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.

D E C I S I O N

***PER CURIAM*:**

This administrative case for Dishonesty and Absenteeism stemmed from the 2nd Indorsement dated 3 May 2004 of Executive Judge Eugenio A. Dacumos (Judge Dacumos) of the Municipal Trial Courts in Cities (MTCC) in San Fernando City, La Union.

In the 2nd Indorsement, Judge Dacumos informed then Deputy Court Administrator Jose P. Perez of the unreconciled entries in the Daily Time Record (DTR) of respondent Glenn Hufalar, Process Server of MTCC-Branch 1 as against the court's logbook of attendance for the months of September, November, and December 2003 and for the months of January and February 2004. Judge Dacumos further stated that, based on the logbook

of attendance for the months of March and April 2004, respondent was often absent and if he was present at 8:00 a.m. or 1:00 p.m., he did not indicate his time out. Neither did respondent file any leave of absence. Judge Dacumos stated that he called the attention of the Clerk of Court, Mr. Jose Bautista (Bautista), regarding this matter and the latter issued several memoranda to respondent regarding his improper attitude, non-declaration of absences in his DTRs and leave forms, and non-performance of his duties in failing to serve subpoenas. Finally, Judge Dacumos further stated that respondent had not been reporting for work since 27 April 2004.

It appears that previously or on 20 September 2002, Bautista issued a memorandum to respondent directing him to report for work everyday not later than 8:30 a.m. and 1:30 p.m. and to file a leave of absence, if necessary. On 26 September 2003, Bautista issued another memorandum to respondent for not declaring his absences in his DTRs and leave forms, discrepancies between the DTRs and the court's logbook of attendance, and non-performance of his duties in failing to serve the subpoenas of the court. Respondent was warned that a repetition of his unprofessional acts may result in his separation from service. On 3 March 2004, Bautista issued another memorandum to respondent regarding his failure to submit the DTRs for the months of September, November, and December 2003 and for the months of January and February 2004. Respondent was further informed of the sanctions in case of violation of Administrative Circular No. 2-99 and Civil Service Commission Circular No. 04, Series of 1991 on absenteeism and tardiness.

Judge Ethelwolda Jaravata of the Municipal Trial Court of Aringay, La Union also issued an Order dated 17 March 2004 directing respondent to explain his neglect of duty for the unserved subpoena regarding a case, under pain of being cited for contempt of court. Respondent did not comply. In connection with the order, Judge Dacumos issued a memorandum to respondent to explain why he was not performing his duties. Despite this directive, respondent still did not submit any explanation. Respondent had not been reporting for work since 27 April 2004 and had been absent without official leave.

In the Memorandum dated 7 October 2004, the Office of the Court Administrator (OCA) found that there were indeed discrepancies in the entries in the DTRs submitted by respondent for the months of September, November, and December 2003 and for the months of January and February 2004. There cannot be a complete entry of arrival and departure for one whole day in office when there are notations of incurred half days. The OCA opined that the notations of half days in the DTRs should indicate in particular whether these were incurred in the morning or in the afternoon. But respondent reported a whole day attendance in office when in fact he was on a half day absence or worse, no entry was reflected in the court's logbook of attendance. The OCA is of the view that respondent's acts amount to tampering of public documents and the unreported undertime in office is tantamount to falsification of the DTRs and gross dishonesty.

In the Resolution dated 16 November 2004, the Court required respondent to comment on the 2nd Indorsement of Judge Dacumos. Notices were sent to respondent at his home address at 277 Cabarosa St., San Fernando City, La Union. The Resolutions dated 22 November 2005 and 6 June 2006 requiring him to show cause why he should not be disciplinarily dealt with or held in contempt for failure to file comment were sent to respondent. Despite receipt of the notices, respondent still failed to file his comment.

On 15 January 2008, the case was referred to the OCA for evaluation, report and recommendation.

The OCA, in its Memorandum dated 3 March 2008, recommended that respondent be found guilty of absenteeism and dishonesty and accordingly be dismissed from the service, with forfeiture of benefits, except as to accrued leave credits, and be disqualified from reinstatement or appointment to any public office, including government-owned or controlled corporations.

We agree with the OCA.

The requirement of due process has been satisfied when respondent was notified of the charges against him. He was given all the chances to explain or defend himself. A final disposition on this matter cannot be made to await indefinitely respondent's comment.

We take judicial notice of the fact that in some government offices there are no bundy clocks. It has been a practice that, upon arrival at work and before proceeding to their respective workstations, employees would first sign their names at the logbook of attendance when they enter that office. It is only at the end of each month that employees would fill up their DTRs reflecting the entries earlier made in the logbook of attendance. In other words, the entries in the DTR are based on the entries made daily in the logbook of attendance.

However, in the present case, records show that there are discrepancies between respondent's DTRs and the court's logbook of attendance. A simple comparison of these two documents would reveal glaring discrepancies. The entries on arrival and departure in respondent's DTRs do not reflect the entries made in the logbook of attendance. Some entries in the logbook of attendance did not indicate the time of arrival or departure but the DTRs showed respondent incurring half days and declaring sick and vacation leaves for the months of September, November, and December 2003 as well as for the months of January and February 2004.

Respondent's DTRs showed a consistent attendance of whole days indicating the arrival time at 8:00 a.m. and the departure time at 5:00 p.m. On certain days, there were notations of "½ day" on the column for undertime. As aptly observed by the OCA, there cannot be a complete entry in the DTR of arrival and departure for one whole day in office with a notation of incurred half day for that same day. Stated otherwise, attendance in office could be whole day or half day but it could never be both whole day and half day on a single day. And even if respondent incurred half days, he should have indicated in his DTR whether these were in the morning or in the afternoon.

Clearly, respondent is guilty of dishonesty when he made false entries in his DTRs which did not reflect the entries he made in the logbook of attendance. The unreported undertime is tantamount to falsification of DTRs. Each false entry in respondent's DTR constitutes falsification of official documents and gross dishonesty.[1] Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity.[2] Dishonesty is a malevolent act that has no place in the judiciary.[3]

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is classified as a grave offense punishable by dismissal even on a first offense. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in government service.[4]

It is indubitable that respondent's DTRs are evidently not representative of the truth. He should be punished by dismissal from the service. While in some cases,[5] we have held that we do not hastily inflict such an extreme penalty of dismissal upon an erring employee, especially in cases where there are mitigating circumstances which could alleviate culpability, this is not so in the present case. Respondent has repeatedly defied and ignored the rules and directives despite the three memoranda issued by Bautista and the orders of Judge Dacumos and Judge Jaravata.

---

[1] *Judge Lacurom v. Magbanua*, 443 Phil. 711 (2003).

[2] *Bartolata v. Julaton*, A.M. No. P-02-1638, 6 July 2006, 494 SCRA 433.

[3] *Cabanatan v. Molina*, 421 Phil. 664 (2001); *Judge Lacurom v. Magbanua*, *supra* note 1.

[4] *Office of the Court Administrator v. Magno*, 419 Phil. 593 (2001); Sec. 58, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

[5] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court*, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1; *Office of the Court Administrator v. Sirios*, 457 Phil. 42 (2003).

Respondent likewise did not file any leave of absence for those days he was absent for a half day, or when on sick or vacation leave. Records also showed he did not file any leave of absence from 1 March 2004,[6] and he was no longer reporting for work since 27 April 2004.[7] There is no question that respondent prejudiced public service with frequent absences. His conduct certainly falls short of the standards prescribed by the Constitution for public officers and employees. A 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.[8] Strict observance of official time is necessary to inspire public respect for the justice system, court officials and employees.

We strongly emphasize this dictum to every person who has chosen to serve in the Judiciary:

> Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. x x x The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.[9]

---

[6] Per Certification dated 27 July 2004 issued by Hermogena F. Bayani, SC Chief Judicial Staff Officer, Leave Division, OCA.

[7] Per Letter dated 3 June 2004 of Jose F. Bautista, Clerk of Court IV and *Ex-Officio* Sheriff, MTCC-San Fernando, La Union.

[8] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, 469 Phil. 535 (2004).

[9] *Mirano v. Saavedra*, A.M. No. P-89-383, August 4, 1993, 225 SCRA 77, 85.

The Third Division of this Court issued on 17 November 2004 a Resolution in A.M. No. 04-10-295-MTCC dropping respondent from the rolls for having been absent without leave since 1 March 2004 and declaring respondent's position vacant. Consequently, the extreme penalty of dismissal from the service is no longer appropriate in this case. We can, however, order the forfeiture of all his benefits, except accrued leave credits.

WHEREFORE, we find respondent Glenn B. Hufalar *GUILTY* of Dishonesty and Absenteeism. We declare the *FORFEITURE* of all benefits due him, except accrued leave credits, if any, with prejudice to reemployment in the government service, including government-owned or controlled corporations. This judgment is immediately executory.

SO ORDERED.

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

Azcuna and *Tinga, JJ.,* on official leave.

Reyes, J., on leave.

FIRST DIVISION

[A.M. No. MTJ-99-1204. July 28, 2008]
(Formerly OCA IPI No. 97-355-MTJ)

GERONIMO C. FUENTES, *complainant, vs.* **JUDGE ROMUALDO G. BUNO, Presiding Judge, Municipal Circuit Trial Court (MCTC), Talibon-Getafe, Bohol,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; WHILE SECTION 76 OF THE REVISED ADMINISTRATIVE CODE AUTHORIZES MTC AND MCTC JUDGES TO PERFORM THE FUNCTIONS OF NOTARIES PUBLIC *EX-OFFICIO*, SC CIRCULAR NO. 1-90, HOWEVER, PROHIBITS JUDGES FROM UNDERTAKING PREPARATION AND ACKNOWLEDGMENT OF PRIVATE DOCUMENTS, CONTRACTS AND OTHER DEEDS OF CONVEYANCES WHICH HAVE NO DIRECT RELATION TO THE DISCHARGE OF THEIR FUNCTION. — While Section 76 of Republic Act No. 296, as amended, and Section 242 of the Revised Administrative Code authorize MTC and MCTC judges to perform the functions of notaries public *ex officio*, the Court laid down the scope of said authority in SC Circular No. 1-90. The above-quoted SC Circular No. 1-90 prohibits judges from undertaking the preparation and acknowledgment of private documents, contracts and other deeds of conveyances which have no direct relation to the discharge of their official functions. In this case, respondent judge admitted that he prepared both the document itself, entitled "Extra-judicial Partition with Simultaneous Absolute Deed of Sale" and the acknowledgment of the said document, which had no relation at all to the performance of his function as a judge. These acts of respondent judge are clearly proscribed by the aforesaid Circular.

2. ID.; ID.; ID.; ID.; SC CIRCULAR NO. 1-90 SPECIFICALLY REQUIRES THAT A CERTIFICATION ATTESTING TO THE LACK OF ANY LAWYER OR NOTARY PUBLIC IN THE SAID MUNICIPALITY OR CIRCUIT BE MADE IN NOTARIZED DOCUMENT; NO SUCH CERTIFICATION WAS MADE IN THE SUBJECT EXTRA-JUDICIAL PARTITION WITH SIMULTANEOUS DEED OF SALE. — While it may be true that no notary public was available or residing within respondent judge's territorial jurisdiction, as shown by the certifications issued by the RTC Clerk of Court and the Municipal Mayor of Talibon, Bohol, SC Circular No. 1-90 specifically requires that a certification attesting to the lack of any lawyer or notary public in the said municipality or circuit be made in the notarized document. Here, no such certification was made in the Extra-Judicial Partition with

Simultaneous Deed of Sale. Respondent judge also failed to indicate in his answer as to whether or not any notarial fee was charged for that transaction, and if so, whether the same was turned over to the Municipal Treasurer of Talibon, Bohol. Clearly, then, respondent judge, who was the sitting judge of the MCTC, Talibon-Getafe, Bohol, failed to comply with the aforesaid conditions prescribed by SC Circular No. 1-90, even if he could have acted as notary public *ex-officio* in the absence of any lawyer or notary public in the municipality or circuit to which he was assigned.

3. JUDICIAL ETHICS; JUDGES; BY FAILING TO COMPLY WITH THE CONDITIONS SET FOR SC CIRCULAR NO. 1-90 AND VIOLATING THE PROVISION OF THE RULES ON NOTARIAL PRACTICE OF 2004, RESPONDENT JUDGE FAILED TO CONDUCT HIMSELF IN A MANNER THAT IS BEYOND REPROACH AND SUSPICION. — Whether or not respondent judge truly acted in good faith when he prepared and acknowledged the subject document is beside the point since he failed to strictly observe the requirements of SC Circular No. 1-90. As noted by the then Court Administrator, the document involved here is Document No. 1158, which shows that numerous documents were notarized by respondent judge in the year 1996 alone. Respondent judge was silent as to whether he charged fees when he notarized documents and if so, whether he turned over the notarial fees to the municipal treasurer. Moreover, contrary to Rule IV, Sec. 6(a) of the Rules on Notarial Practice of 2004, respondent notarized the said document without the SPA of the attorney-in-fact of the vendors which gave rise to the legal problem between the vendors and the vendee concerning the scope of authority of the aforesaid attorney-in-fact. By failing to comply with the conditions set for SC Circular No. 1-90 and violating the provision of the Rules on Notarial Practice of 2004, respondent judge failed to conduct himself in a manner that is beyond reproach and suspicion. Any hint of impropriety must be avoided at all cost. Judges are enjoined by the Code of Judicial Conduct to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case against Judge Romualdo G. Buno of the 4TH Municipal Circuit Trial Court (MCTC), Talibon-Getafe, Bohol, stemmed from a complaint filed by Geronimo C. Fuentes charging him with abuse of discretion and authority and graft and corruption.

In his complaint, Geronimo Fuentes alleged that he is one of the nine (9) heirs of Bernardo Fuentes, their father, who owned an agricultural land located at San Jose, Talibon, Bohol, and that respondent judge prepared and notarized an "Extra-Judicial Partition with Simultaneous Absolute Deed of Sale" of the said agricultural land, executed by complainant's mother Eulalia Credo *Vda*. de Fuentes, widow of Bernardo Fuentes, and Alejandro Fuentes, on his own behalf and on behalf of his brothers and sisters, including Geronimo Fuentes, as heirs/vendors and one Ma. Indira A. Auxtero, as vendee; that in the aforesaid document, the aforementioned agricultural land was sold, transferred/conveyed by the heirs/vendors to the vendee despite the fact that in his Special Power of Attorney (SPA), he merely appointed his brother, Alejandro Fuentes to mortgage said agricultural land but not to partition, much more to sell the same. According to complainant Geronimo Fuentes respondent judge notarized said document as *ex-officio* Notary Public, thereby abusing his discretion and authority as well as committing graft and corruption.

In his 1st Indorsement dated December 2, 1997, the then Court Administrator required the respondent to file his comment on the complaint within ten days. In compliance thereto respondent judge submitted his answer, which prayed for the dismissal of the complaint. He admitted that on December 24, 1996, while he was the Presiding Judge of the MCTC, Talibon-Getafe, stationed at Talibon, Bohol, he notarized an Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale, described as Document No. 1158, Series of 1996. He explained his reasons and related the circumstances surrounding the case as follows:

1. That in the last week of the month of September, 1996, Mrs. Eulalia *Vda*. de Fuentes, Alejandro Fuentes together with Mrs. Helen A. Auxtero and Miss Ma. Indira Auxtero came to my house and requested me to make and prepare a document of sale between the Heirs of Bernardo Fuentes and Ma. Indira Auxtero as Vendee and upon verification of the papers they presented to the undersigned it was found out that the land subject of the sale is a conjugal property of the deceased Bernardo Fuentes and Eulalia Credo *Vda*. de Fuentes. Being a conjugal property, the undersigned advised them to secure special power of attorney for the children of Bernardo Fuentes who are out of town.

2. On the 20th of December, 1996 Eulalia *Vda*. de Fuentes and Alejandro Fuentes came back to the house bringing a special power of attorney executed by Bonifacio Fuentes, Benjamin Fuentes, Urbano Fuentes, Samuela Fuentes, Rufina Fuentes and Bernardo Fuentes, Jr. carbon copy of the said Special Power of Attorney herewith attached as Annex "A" of the answer. All these special power of attorney empowers Alejandro Fuentes to execute a Deed of Sale of a parcel of land under Transfer Certificate of Title No. 24937 registered in the name of Bernardo Fuentes, their deceased father.

Since no special power of attorney was presented to the undersigned executed by PO2 Geronimo Fuentes, the undersigned refused to make their document of sale but Eulalia *Vda*. de Fuentes and Alejandro Fuentes earnestly requested the undersigned to make and prepare the necessary document saying that the special power of attorney of PO2 Geronimo Fuentes is coming and they are in urgent need of the money and because of their request, the undersigned prepared the document, and Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale in favor of Ma. Indira Auxtero. That PO2 Geronimo Fuentes was included in the Deed of Sale because of the assurance of Alejandro Fuentes and Eulalia *Vda*. de Fuentes that the Special Power of Attorney of PO2 Geronimo Fuentes is coming.

3. That after the necessary document was prepared Eulalia *Vda*. de Fuentes and Alejandro Fuentes together with the vendee, Ma. Indira Auxtero signed the document on December 24, 1996 and on that day the said document was notarized by the undersigned.

4. That few days after the document was notarized, the undersigned learned that the Special Power of Attorney executed by PO2 Geronimo Fuentes empowered Alejandro Fuentes only to mortgage the property

so Mrs. Eulalia *Vda*. de Fuentes, Alejandro Fuentes and the vendee, Ma. Indira Auxtero were called by the undersigned about the Special Power of Attorney executed by PO2 Geronimo Fuentes but Eulalia Fuentes and Alejandro Fuentes explained to the undersigned that they will be responsible for PO2 Geronimo Fuentes considering that the money was already spent by them and the vendee, Ma. Indira Auxtero also assured the undersigned that if PO2 Geronimo Fuentes insists to take back his share, she is willing and in fact she reserved the share of Geronimo Fuentes, hence, the transaction was completed.

5. The undersigned is making and notarizing the document outside of office hour cannot be said to have abuse (sic) his discretion and authority since he was earnestly requested by Eulalia *Vda*. de Fuentes and Alejandro Fuentes to prepare and notarized the document with authority from his brothers and sisters and with respect to Eulalia *Vda*. de Fuentes, she is selling her share of the conjugal property which is one-half (½) of the entire parcel of land.

In the aforementioned answer, respondent judge contended that he could not be charged of graft and corruption, since in a municipality where a notary public is unavailable, a municipal judge is allowed to notarize documents or deeds as *ex-officio* notary public. To support his claim, he presented two certifications: one, from Atty. Azucena C. Macalolot, Clerk of Court VI of the RTC, Branch 52, Talibon, Bohol, who certified that according to their records and dockets, no petition for commission and/or renewal of commission as notary public was granted by the said court for calendar year 1996 and no appointment as notary public was issued for that year; and the other, from Mayor Juanario A. Item of Talibon, Bohol who also certified that no notary public was staying and residing in the Municipality of Talibon, Bohol during the year 1996.

Respondent judge contended that he did nothing wrong in preparing and notarizing the said document and that he acted in good faith and in obedience to the earnest plea of complainant's mother and siblings who were in urgent need of money, and with their assurance that complainant's SPA was forthcoming. In his attempt to explain his lack of malice, respondent judge narrated that after learning that the SPA only authorized his brother, Alejandro Fuentes to mortgage the property, he

summoned the latter, his mother and the buyer of the land. Alejandro then assured him that they would be responsible to the complainant and that the buyer was willing to return complainant's share in the property. Respondent further questioned complainant's sincerity in filing the complaint because the latter allegedly wanted merely the respondent to persuade the buyer to return the whole property to him instead of his share only.

In its Memorandum Report, the OCA recommended that the present case be re-docketed as a regular administrative matter and that respondent be fined in the amount of ₱10,000.00 for unauthorized notarization of a private document, the same to be deducted from his retirement benefit. The said OCA recommendation was premised on the lack of authority of respondent judge to prepare and notarize the document in question, which had no direct relation to the performance of his official functions as a judge.

While Section 76 of Republic Act No. 296,[1] as amended, and Section 242 of the Revised Administrative Code[2] authorize MTC and MCTC judges to perform the functions of notaries public *ex officio*, the Court laid down the scope of said authority in SC Circular No. 1-90. Pertinently, the said Circular reads:

MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of

---

[1] Sec. 76. *Miscellaneous Powers of Justice of the Peace*. — A justice of the peace shall have power anywhere within his territorial jurisdiction to solemnize marriages, authenticate merchants' books, administer oaths and take depositions and acknowledgment, and in his capacity as *ex officio* notary public, may perform any act within the competency of a notary public.

[2] Sec. 242. *Officers acting as notaries public ex officio*. — Except as otherwise specially provided, the following officials, and none other, shall be deemed to be notary public *ex officio*, and as such they are authorized to perform within the limits of their territorial jurisdiction as hereinbelow defined, all the duties appertaining to the office of the notary public:

x x x x x x x x x

(c) Justices of the peace, within the limits of the territory over which their jurisdiction as justices of the peace and other officers who are by law vested with the office of justice of the peace *ex officio* shall not solely by reason of such authority, be so entitled to act in the capacity of notaries *ex officio*.

their official functions and duties [*Borre v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; *Penera v. Dalocanog*, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193]. They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

The above-quoted SC Circular No. 1-90 prohibits judges from undertaking the preparation and acknowledgment of private documents, contracts and other deeds of conveyances which have no direct relation to the discharge of their official functions. In this case, respondent judge admitted that he prepared both the document itself, entitled "Extra-judicial Partition with Simultaneous Absolute Deed of Sale" and the acknowledgment of the said document, which had no relation at all to the performance of his function as a judge. These acts of respondent judge are clearly proscribed by the aforesaid Circular.

While it may be true that no notary public was available or residing within respondent judge's territorial jurisdiction, as shown by the certifications issued by the RTC Clerk of Court and the Municipal Mayor of Talibon, Bohol, SC Circular No. 1-90 specifically requires that a certification attesting to the lack of any lawyer or notary public in the said municipality or circuit be made in the notarized document. Here, no such certification

was made in the Extra-Judicial Partition with Simultaneous Deed of Sale. Respondent judge also failed to indicate in his answer as to whether or not any notarial fee was charged for that transaction, and if so, whether the same was turned over to the Municipal Treasurer of Talibon, Bohol. Clearly, then, respondent judge, who was the sitting judge of the MCTC, Talibon-Getafe, Bohol, failed to comply with the aforesaid conditions prescribed by SC Circular No. 1-90, even if he could have acted as notary public *ex-officio* in the absence of any lawyer or notary public in the municipality or circuit to which he was assigned.

Whether or not respondent judge truly acted in good faith when he prepared and acknowledged the subject document is beside the point since he failed to strictly observe the requirements of SC Circular No. 1-90. As noted by the then Court Administrator, the document involved here is Document No. 1158, which shows that numerous documents were notarized by respondent judge in the year 1996 alone. Respondent judge was silent as to whether he charged fees when he notarized documents and if so, whether he turned over the notarial fees to the municipal treasurer. Moreover, contrary to Rule IV, Sec. 6(a) of the Rules on Notarial Practice of 2004,[3] respondent notarized the said document without the SPA of the attorney-in-fact of the vendors which gave rise to the legal problem between the vendors and the vendee concerning the scope of authority of the aforesaid attorney-in-fact. By failing to comply with the conditions set for SC Circular No. 1-90 and violating the provision of the Rules on Notarial Practice of 2004, respondent judge failed to conduct himself in a manner that is beyond reproach and suspicion. Any hint of impropriety must be avoided at all cost. Judges are enjoined by the Code of Judicial Conduct to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties.[4]

[3] SECTION 6. Improper Instruments or Documents. — A notary public shall not notarize:

(a) a blank or incomplete instrument or document; or

(b) an instrument or document without appropriate notarial certification.

[4] *Gravela v. Villanueva*, A.M. No. 02-1414-MTJ, January 28, 2003, 396 SCRA 105, 110.

Rule 140 of the Rules of Court deals with the administrative sanctions imposable on erring judges. Violation of Supreme Court rules, directives and circulars is a Less Serious Charge punishable by suspension from office or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. However, respondent judge's application for optional retirement had already been approved by the Court *en banc* on March 10, 1998 in Administrative Matter No. 9449-Ret. and the release of his retirement benefits was allowed provided that the amount of ₱20,000.00 was withheld from the said retirement benefits, pursuant to the Resolution of this Court's Third Division on June 16, 1999 in this administrative case, formerly docketed as Administrative Matter OCA IPI No. 97-355-MTJ.

WHEREFORE, respondent Judge ROMUALDO G. BUNO, now retired, of the Municipal Circuit Trial Court of Talibon-Getafe, Bohol, is found *LIABLE* for failure to comply with SC Circular No. 1-90 and the Rules on Notarial Practice. He is hereby *ORDERED* to pay a *FINE* of Twelve Thousand Pesos (₱12,000.00), to be deducted from the amount withheld from his retirement benefits.

SO ORDERED.

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

EN BANC

[A.M. No. P-04-1898. July 28, 2008]
(Formerly OCA IPI No. 04-1887-P)

ATTY. STANLEY G. ZAMORA, *complainant, vs.* **RAMON P. VILLANUEVA, Sheriff IV, Regional Trial Court, Branch 96, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; GRAVE MISCONDUCT; SECTION 9, RULE 141 OF THE RULES OF COURT REQUIRES SHERIFFS TO SECURE COURT'S PRIOR APPROVAL OF THE ESTIMATED EXPENSES AND FEES NEEDED TO IMPLEMENT WRITS OF EXECUTION; ANY ACT DEVIATING FROM THE PROCEDURES LAID DOWN BY THE RULES IS MISCONDUCT WARRANTING DISCIPLINARY ACTION. — It is undisputed that respondent demanded and received ₱10,000 from complainant. He, however, reasoned that the amount was to defray the expenses he incurred in implementing the writ of execution and annotating the notice of levy on defendant's property in Nasugbu, Batangas. Nevertheless, his justifications for demanding and receiving the amount from complainant are futile attempts to exculpate himself from liability under the law. Sec. 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor. The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit. In the present case, there was no evidence showing that respondent submitted to the court, for its approval, the estimated expenses for the execution of the writ before he demanded ₱10,000 from complainant. Neither was it shown that he rendered an accounting and liquidated the said amount to the court. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

2. ID.; ID.; ID.; ID.; ID.; RESPONDENT SHERIFF'S REFUSAL TO CONDUCT THE EXECUTION SALE IS BASELESS AND

ILLEGAL AND HE HAS NO BLANKET AUTHORITY TO ADJOURN THE EXECUTION SALE. — As regards respondent's refusal to proceed with the execution sale, allegedly due to the parties' refusal to pay the sales commission, nowhere in the Rules can it be inferred that payment of any such commission is a pre-requisite to an execution sale. Respondent's refusal to conduct the execution sale was baseless and illegal. As to the validity of the adjournment of the execution sale, Sec. 22, Rule 39 of the Rules of Court clearly shows that a sheriff has no blanket authority to adjourn the sale. It is only upon written consent of the judgment obligor and obligee, or their duly authorized representatives, that the sheriff may adjourn the sale to a date and time agreed upon. The sheriff may adjourn it from day to day when there is no such agreement but only if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice or the day to which it was adjourned. Consequently, respondent's act of unilaterally adjourning the execution sale is irregular and contrary to the Rules.

3. ID.; ID.; ID.; ID.; ID.; HIGH STANDARDS ARE EXPECTED OF SHERIFFS WHO PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE. — As employees of the court who play an important role in the administration of justice, high standards are expected of sheriffs. This Court expounded in *Vda. de Abellera v. Dalisay*: At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice. By the nature of their functions, sheriffs must conduct themselves with propriety and decorum, to be above suspicion. Sheriffs are court officers and, like everyone else in the judiciary, are called upon to discharge their sworn duties with great care and diligence. They cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.

4. ID.; ID.; ID.; ID.; ID.; RESPONDENT'S IMPROPER CONDUCT OF DEMANDING ₱10,000.00 FROM THE COMPLAINANT, HIS REFUSAL TO PROCEED WITH THE EXECUTION SALE AND HIS ACT OF UNILATERALLY ADJOURNING THE EXECUTION SALE CONSTITUTE GRAVE MISCONDUCT; PENALTY OF DISMISSAL IS WARRANTED IN CASE AT BAR. — Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the 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. In the present case, it has been sufficiently proven that respondent willfully violated established rules. Respondent's improper conduct of demanding ₱10,000 from the complainant; his refusal to proceed with the execution sale; and his act of unilaterally adjourning the execution sale were against the clear mandate of the rules and tend to diminish the faith of the people in the judiciary. For this, the Court finds respondent guilty of Grave Misconduct. Section 52 (A)(3) of the Revised Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal for the first (1st) offense. Moreover, Section 9 of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides: Sec. 9. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal liability.

D E C I S I O N

***PER CURIAM*:**

For resolution is a letter-complaint[1] dated December 2, 2003, filed by Atty. Stanley G. Zamora, charging respondent Ramon P. Villanueva, Deputy Sheriff, Regional Trial Court (RTC), Branch 96, Quezon City, with Gross Misconduct.

The antecedents are as follows:

---

[1] *Rollo,* pp. 2-4.

Atty. Zamora, herein complainant, is the counsel for plaintiff in Civil Case No. Q-01-43767, entitled "*Sps. Mario and Carmelita Cruel v. Sps. Ernesto Pe Lim and Lulu Yu Pe Lim.*" Complainant narrates that on June 28, 2002, the RTC granted plaintiff's motion for the issuance of a writ of execution. Consequently, he informed respondent sheriff that the defendant has real property in Nasugbu, Batangas and requested him to prepare the required Notice of Levy on the property. Respondent in turn demanded from complainant ₱10,000, allegedly to defray the expenses for the execution proceedings. Complainant agreed and initially gave him ₱5,000[2] as advance payment; the balance was to be paid upon the transfer of the property in the name of his client.[3]

Respondent and one of complainant's paralegal staff members proceeded to Nasugbu, Batangas for the purpose of annotating the notice of levy on the property's title.[4] After the notice had been annotated on the title, respondent refused to proceed with the execution sale unless and until he was paid the balance of ₱5,000.[5]

On September 8, 2003, complainant acceded to respondent's demand and gave him ₱5,000[6] after respondent assured him that he would proceed with the execution sale.[7] However, before the date of the execution sale, respondent demanded an additional five percent of the bid price before proceeding with the sale. Complainant, however, refused to heed his demand.[8] Hence, respondent refused to proceed with the sale on the scheduled date; and further refused to accept the bid of complainant's client.[9]

---

[2] *Id.* at 5.

[3] *Id.* at 2.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 6.

[7] *Supra*, note 3.

[8] *Id.* at 3.

[9] *Id.*

In a letter[10] dated October 29, 2003, complainant reminded the respondent of the irregularity of his acts. He further warned respondent that his continued refusal to proceed with the sale would render him administratively and criminally liable.[11]

This letter notwithstanding, respondent failed to perform his duty. Hence, this administrative complaint.

In his Comment[12] dated April 7, 2004, respondent admitted having received the ₱10,000 but contended that the amount was used in serving the writ of execution. He asserted that he, along with another court personnel, Maveric Marasigan, and two police officers, tried to attach the personal properties of defendant Ernesto Pe Lim. However, Deputy Sheriff Joseph Visnar of the RTC, Branch 216, Quezon City was already implementing another writ of execution against the same defendant. In his attempt to attach defendant's properties, respondent incurred transportation, representation and other expenses.[13] Thereafter, he and Marasigan went to Nasugbu, Batangas to register the notice of levy, where he incurred further expenses.[14] Lastly, he adds that he tried to serve the notice on the defendant twice and had to post it twice in three conspicuous public places and once in Nasugbu, Batangas.[15]

As regards the questioned auction sale, respondent contended that he was ready to proceed with the public auction, with complainant's client as the only bidder. He then requested complainant to pay the corresponding Office Commission to the Clerk of Court pursuant to the Rules of Court. However, complainant refused to pay, claiming that the title should first be consolidated.[16]

---

[10] *Id*. at 7.

[11] *Id*.

[12] *Id*. at 13-15.

[13] *Id*. at 13.

[14] *Id*. at 14.

[15] *Id*.

[16] *Id*. at 15.

Respondent prayed that the administrative complaint be dismissed for lack of basis.

The parties thereafter filed their respective letters[17] to refute each other's accusations and defenses.

In its Report[18] dated September 9, 2004, the Office of the Court Administrator recommended that respondent be adjudged guilty of grave misconduct and be meted the penalty of suspension for three (3) months without pay.[19]

From the parties' pleadings and letters, the issues for resolution are simplified as follows: (1) whether or not respondent observed Sec. 9, Rule 141 of the Rules of Court relative to the expenses of the execution sale; and (2) whether or not respondent prematurely adjourned the execution sale contrary to Sec. 22, Rule 39, Rules of Court.

It is undisputed that respondent demanded and received ₱10,000 from complainant. He, however, reasoned that the amount was to defray the expenses he incurred in implementing the writ of execution and annotating the notice of levy on defendant's property in Nasugbu, Batangas. Nevertheless, his justifications for demanding and receiving the amount from complainant are futile attempts to exculpate himself from liability under the law.

Sec. 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. Specifically, the Rules provide:

> **SEC. 9**. S*heriffs and other persons serving processes.* — x x x
>
> (l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit;

---

[17] *Id.* at 19-22; *id.* at 36-37; *id.* at 28-29; *id.* at 23-24; *id.* at 40-41.

[18] *Id.* at 44-50.

[19] *Id.* at 50.

1. On the first four thousand (₱4,000.00) pesos, four (4%) per centum.

2. On all sums in excess of four thousand (₱4,000.00) pesos, two (2%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, *subject to the approval of the court*. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (emphasis supplied)

Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor.[20] The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.[21]

---

[20] *Balanag, Jr. v. Osita*, A.M. No. P-01-1454, September 12, 2002, 388 SCRA 630, 634.

[21] *Bercasio v. Benito*, A.M. No. P-95-1158, July 14, 1997, 275 SCRA 405, citing Section 9, Rule 141 of the Rules of Court.

In the present case, there was no evidence showing that respondent submitted to the court, for its approval, the estimated expenses for the execution of the writ before he demanded ₱10,000 from complainant. Neither was it shown that he rendered an accounting and liquidated the said amount to the court. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

As regards respondent's refusal to proceed with the execution sale, allegedly due to the parties' refusal to pay the sales commission, nowhere in the Rules can it be inferred that payment of any such commission is a pre-requisite to an execution sale. Respondent's refusal to conduct the execution sale was baseless and illegal.

As to the validity of the adjournment of the execution sale, Sec. 22, Rule 39 of the Rules of Court[22] clearly shows that a sheriff has no blanket authority to adjourn the sale. It is only upon written consent of the judgment obligor and obligee, or their duly authorized representatives, that the sheriff may adjourn the sale to a date and time agreed upon. The sheriff may adjourn it from day to day when there is no such agreement but only if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice or the day to which it was adjourned. Consequently, respondent's act of unilaterally adjourning the execution sale is irregular and contrary to the Rules.

As employees of the court who play an important role in the administration of justice, high standards are expected of sheriffs. This Court expounded in *Vda. de Abellera v. Dalisay*:[23]

At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence,

---

[22] Sec. 22. *Adjournment of sale.* — By written consent of the judgment obligor and obligee, or their duly authorized representatives, the officer may adjourn the sale to any date and time agreed upon by them. Without such agreement, he may adjourn the sale from day to day if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice or the day to which it was adjourned.

[23] A.M. No. P-87-100, February 12, 1997, 268 SCRA 64, 67.

their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

By the nature of their functions, sheriffs must conduct themselves with propriety and decorum, to be above suspicion.[24] Sheriffs are court officers and, like everyone else in the judiciary, are called upon to discharge their sworn duties with great care and diligence.[25] They cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[26]

Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.[27] 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.[28] In the present case, it has been sufficiently proven that respondent willfully violated established rules. Respondent's improper conduct of demanding ₱10,000 from the complainant; his refusal to proceed with the execution sale; and his act of unilaterally adjourning the execution sale were against the clear mandate of the rules and tend to diminish the faith of the people in the judiciary. For this, the Court finds respondent guilty of Grave Misconduct.

---

[24] *Tan v. Dael*, A.M. No. P-00-1392, July 13, 2000, 335 SCRA 513, 521.

[25] *Oliveros v. San Jose*, A.M. No. P-02-1582, January 28, 2003, 396 SCRA 121, 123.

[26] *Caja v. Nanquil*, A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174, 199.

[27] *Mendoza v. Navarro*, A.M. No. P-05-2034, September 11, 2006, 501 SCRA 354, 363.

[28] *Geronca v. Magalona*, A.M. No. P-07-2398, February 13, 2008.

Section 52(A)(3) of the Revised Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal for the first (1st) offense. Moreover, Section 9 of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides:

> Sec. 9. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal liability.

WHEREFORE, Sheriff Ramon P. Villanueva is found *GUILTY* of grave misconduct. He is ordered *DISMISSED* from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or -controlled corporations and financial institutions. Respondent is furthered ordered to return the amount of ₱10,000 to complainant Atty. Stanley G. Zamora.

Let copies of this decision be furnished the Civil Service Commission and attached to his personnel file in the judiciary.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 146091. July 28, 2008]

MARIA PAZ V. NEPOMUCENO, joined by her husband, FERMIN A. NEPOMUCENO, *petitioners, vs.* **CITY OF SURIGAO and SALVADOR SERING in his capacity as City Mayor of Surigao,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; THE VALUE OF PETITIONERS' PROPERTY MUST BE ASCERTAINED AS OF 1960 WHEN IT WAS ACTUALLY TAKEN; IT IS AS OF THAT TIME THAT THE REAL MEASURE OF THEIR LOSS MAY FAIRLY BE ADJUDGED. — In a long line of cases, we have consistently ruled that where actual taking is made without the benefit of expropriation proceedings and the owner seeks recovery of the possession of the property prior to the filing of expropriation proceedings, it is the value of the property at the time of taking that is controlling for purposes of compensation. As pointed out in *Republic v. Lara,* the reason for this rule is: The owner of private property should be **compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury**. And what he loses is only **the actual value of his property at the time it is taken**. This is the only way the compensation to be paid can be truly just; *i.e.*, "just" not only to the individual whose property is taken, "but to the public, which is to pay for it." Thus, the value of petitioners' property must be ascertained as of 1960 when it was actually taken. It is as of that time that the real measure of their loss may fairly be adjudged. The value, once fixed, shall earn interest at the legal rate until full payment is effected, conformably with other principles laid down by case law.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PAYMENT; SINCE THERE WAS NEVER ANY CONTRACTUAL OBLIGATION BETWEEN THE PARTIES, ARTICLE 1250 OF THE CIVIL CODE ON THE EFFECTS OF EXTRAORDINARY INFLATION FINDS NO APPLICATION. — Regarding petitioners' contention on the applicability of

Article 1250 of the Civil Code, *Republic v. CA* is enlightening: **Article 1250 of the Civil Code**, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, **has strict application only to contractual obligations**. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency. Since there was never any contractual obligation between the parties in this case, Article 1250 of the Civil Code finds no application.

3. ID.; ID.; ID.; ID.; A DECISION OF THE COURT OF APPEALS DOES NOT ESTABLISH JUDICIAL PRECEDENT. — Petitioners cannot properly insist on the application of the CA decision in *Spouses Mamerto Espina, Sr. and Flor Espina v. City of Ormoc.* A decision of the CA does not establish judicial precedent. A ruling of the CA on any question of law is not binding on this Court. In fact, the Court may review, modify or reverse any such ruling of the CA.

4. ID.; DAMAGES; EXEMPLARY DAMAGES; CANNOT BE AWARDED WITHOUT PROOF OF ANY SOCIALLY DELETERIOUS ACTION OR MISUSE OF RESPONDENT MUNICIPALITY'S POWER OF EMINENT DOMAIN. — We deny petitioners' prayer for exemplary damages. Exemplary damages may be imposed by way of example or correction for the public good. The award of these damages is meant to be a deterrent to socially deleterious actions. Exemplary damages would have been appropriate had it been shown that the city government indeed misused its power of eminent domain. In this case, both the RTC and the CA found there was no socially deleterious action or misuse of power to speak of. We see no reason to rule otherwise.

APPEARANCES OF COUNSEL

*Escalon Law Office f*or petitioners.
City Legal Office (Surigao) for respondents.

D E C I S I O N

CORONA, *J.*:

Petitioners assail the February 29, 2000 decision[1] and October 12, 2000 resolution of the Court of Appeals (CA) in CA-G.R. CV No. 56461 affirming with modification the decision of the Regional Trial Court (RTC) of Surigao City, Branch 32, in Civil Case No. 4570.

Civil Case No. 4570 was a complaint for "Recovery of Real Property and/or its Market Value" filed by petitioner Maria Paz Nepomuceno to recover a 652 sq. m. portion[2] of her 50,000 sq. m. lot[3] which was occupied, developed and used as a city road by the city government of Surigao. Maria Paz alleged that the city government neither asked her permission to use the land nor instituted expropriation proceedings for its acquisition. On October 4, 1994, she and her husband, co-petitioner, Fermin A. Nepomuceno, wrote respondent (then Surigao City Mayor) Salvador Sering a letter proposing an amicable settlement for the payment of the portion taken over by the city. They subsequently met with Mayor Sering to discuss their proposal but the mayor rebuffed them in public and refused to pay them anything. In a letter dated January 30, 1995, petitioners sought reconsideration of the mayor's stand. But again, the city mayor turned this down in his reply dated January 31, 1995. As a consequence, petitioners claimed that they suffered mental anguish, embarrassment, disappointment and emotional distress which entitled them to moral damages.

---

[1] Penned by Associate Justice Delilah Vidallon-Magtolis (retired) and concurred in by Associate Justices Eloy R. Bello, Jr. (retired) and Mercedes Gozo-Dadole (retired) of the Fourteenth Division of the Court of Appeals. *Rollo*, pp. 18-27.

[2] It was surveyed and identified as Lot No. 900-A-2. The lot was inherited by petitioner Maria Paz from her father and stepmother, spouses Vicente Fernandez and Josefa Elumba.

[3] The lot is registered in the name of petitioner Maria Paz V. Nepomuceno under Transfer Certificate of Title No. 3659 and located in Barangay San Roque (Tobongan), Surigao City.

In their answer, respondents admitted the existence of the road in question but alleged that it was constructed way back in the 1960s during the administration of former Mayor Pedro Espina. At that time, the lot was owned by the spouses Vicente and Josefa Fernandez who signed a road right-of-way agreement in favor of the municipal government. However, a copy of the agreement could no longer be found because the records were completely destroyed and lost when the Office of the City Engineer was demolished by typhoon Nitang in 1994.

After hearing the parties and evaluating their respective evidence, the RTC rendered its decision[4] and held:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the City of Surigao to pay to Maria Paz V. Nepomuceno and her husband, Fermin Nepomuceno, the sum of ₱5,000.00 as attorney's fees, and the further sum of ₱3,260.00 as compensation for the portion of land in dispute, with legal interest thereon from 1960 until fully paid, and upon payment, directing her to execute the corresponding deed of conveyance in favor of the said defendant. The Clerk of Court shall execute the necessary instrument in the event of her failure to do so.
>
> The claims for moral and exemplary damages are denied for lack of basis. No pronouncement as to costs.
>
> SO ORDERED.[5]

Unsatisfied with that decision, the petitioners appealed to the CA. As stated earlier, the CA modified the RTC decision and held that petitioners were entitled to ₱30,000 as moral damages for having been rebuffed by Mayor Sering in the presence of other people. It also awarded petitioners ₱20,000 as attorney's fees and litigation expenses considering that they were forced to litigate to protect their rights and had to travel to Surigao City from their residence in Ormoc City to prosecute their claim. The CA affirmed the decision of the trial court in all other respects. Petitioners filed a motion for reconsideration but it was denied. Hence, this petition.

---

[4] Penned by Judge Diomedes M. Eviota. *Rollo,* pp. 28-41.

[5] *Id.*, p. 41.

Petitioners claim that, in fixing the value of their property, justice and equity demand that the value at the time of actual payment should be the basis, not the value at the time of the taking as the RTC and CA held. They demand ₱200/sq. m. or a total sum of ₱130,400 plus legal interest. In the alternative, petitioners pray for the re-examination of the meaning of just compensation and cite the separate concurring opinion of Justice Antonio Barredo in *Municipality of La Carlota v. Spouses Gan*.[6]

Petitioners also assert that the CA decision in *Spouses Mamerto Espina, Sr. and Flor Espina v. City of Ormoc*[7] should be applied to this case because of the substantial factual similarity between the two cases. In that case, the City of Ormoc was directed to institute a separate expropriation proceeding over the subject property.

Moreover, petitioners maintain that exemplary damages should be awarded because respondent City of Surigao illegally took their property.

Petitioners' arguments are without merit.

In a long line of cases, we have consistently ruled that where actual taking is made without the benefit of expropriation proceedings and the owner seeks recovery of the possession of the property prior to the filing of expropriation proceedings, it is the value of the property at the time of taking that is controlling for purposes of compensation.[8] As pointed out in *Republic v. Lara*,[9] the reason for this rule is:

---

[6] 150-A Phil. 588, 597 (1972). According to Justice Barredo, the basis of the value of the property should be the value of the currency at the time of the taking, pursuant to the benefits of Article 1250 of the Civil Code, in addition to the payment of interest.

[7] CA-G.R. CV No. 28856, 12 August 1996.

[8] *Manila International Airport Authority v. Rodriguez*, G.R. No. 161836, 28 February 2006, 483 SCRA 619, 627; *Republic v. Sarabia*, G.R. No. 157847, 25 August 2005, 468 SCRA 142; *Ansaldo v. Tantuico, Jr.*, G.R. No. 50147, 03 August 1990, 188 SCRA 300; *Alfonso v. Pasay City*, 106 Phil. 1017 (1960).

[9] 96 Phil. 170 (1954).

The owner of private property should be **compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury.** And what he loses is only **the actual value of his property at the time it is taken.** This is the only way the compensation to be paid can be truly just; *i.e.*, "just" not only to the individual whose property is taken, "but to the public, which is to pay for it."

Thus, the value of petitioners' property must be ascertained as of 1960 when it was actually taken. It is as of that time that the real measure of their loss may fairly be adjudged. The value, once fixed, shall earn interest at the legal rate until full payment is effected, conformably with other principles laid down by case law.[10]

Regarding petitioners' contention on the applicability of Article 1250 of the Civil Code,[11] *Republic v. CA*[12] is enlightening:

Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, **has strict application only to contractual obligations.** In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency. (emphasis supplied)

Since there was never any contractual obligation between the parties in this case, Article 1250 of the Civil Code finds no application.

Moreover, petitioners cannot properly insist on the application of the CA decision in *Spouses Mamerto Espina, Sr. and Flor Espina v. City of Ormoc*.[13] A decision of the CA does not establish judicial precedent. A ruling of the CA on any question

---

[10] *Ansaldo v. Tantuico, Jr.*, *supra* note 8, at pp. 304-305.

[11] See note in footnote 6.

[12] 433 Phil. 106 (2002).

[13] *Supra* note 7.

of law is not binding on this Court.[14] In fact, the Court may review, modify or reverse any such ruling of the CA.

Finally, we deny petitioners' prayer for exemplary damages. Exemplary damages may be imposed by way of example or correction for the public good.[15] The award of these damages is meant to be a deterrent to socially deleterious actions.[16] Exemplary damages would have been appropriate had it been shown that the city government indeed misused its power of eminent domain.[17] In this case, both the RTC and the CA found there was no socially deleterious action or misuse of power to speak of. We see no reason to rule otherwise.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

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

---

[14] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, 21 September 2007.

[15] Article 2229, Civil Code.

[16] *Benguet Electric Cooperative, Inc. v. CA*, 378 Phil. 1137, 1151 (1999).

[17] *Cf. Republic v. CA*, G.R. No. 147245, 31 March 2005; *National Power Corporation v. CA and Pobre*, G.R. No. 106804, 12 August 2004.

SECOND DIVISION

[G.R. No. 147633. July 28, 2008]

ALDEGUER & CO., INC./LOALDE BOUTIQUE, *petitioner, vs.* **HONEYLINE TOMBOC,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ARBITERS ARE MANDATED BY LAW TO USE EVERY REASONABLE MEANS TO ASCERTAIN THE FACTS OF EACH CASE SPEEDILY AND OBJECTIVELY, WITHOUT TECHNICALITIES OF LAW OR PROCEDURE, ALL IN THE INTEREST OF DUE PROCESS. — A Labor Arbiter is mandated by law to use every reasonable means to ascertain the facts of each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process. Failure to submit a position paper on time is not a ground for striking it from the records. And lack of verification of petitioner's position paper is only a formal, not a jurisdictional, defect.

2. ID.; ID.; ID.; RESPONDENT WAS NOT DEPRIVED OF DUE PROCESS. — In **Mañebo**, the Court noted that the labor arbiter principally based its decision on the facts alleged in, and documents attached to the therein respondent-employer's "Supplemental Position Paper and Memorandum," no copy of which was even furnished the petitioner-employee Mañebo to thus deny him due process. In the case at bar, petitioner submitted its Position Paper on February 6, 1998 or a day after the labor arbiter considered the case submitted for decision. Unlike Mañebo, herein respondent was furnished a copy of petitioner's Position Paper on February 6, 1998. Between February 6, 1998 and March 16, 1998 when the labor arbiter promulgated its decision, respondent does not even appear to have rebutted petitioner's Position Paper. From the recital of the facts of the case at bar then, respondent was not deprived of due process.

3. ID.; TERMINATION OF EMPLOYMENT; FRAUD OR WILLFUL BREACH OF TRUST; RESPONDENT'S

EMPLOYMENT WAS TERMINATED FOR JUST CAUSE. — Petitioner has shown just cause for the termination of respondent's employment under Art. 282 of the Labor Code on the ground of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." Nenita's affidavit and audit report are corroborated by petitioner's Solidbank passbook showing that the ₱12,090.00 cash sales for May 11, 1997, ₱9,203.40 cash sales for May 12, 1997, and ₱6,844.30 cash sales for May 13, 1997 — all duly receipted — were not deposited in petitioner's account with Solidbank. The claim of Jinky, a cashier, in her affidavit that it was respondent who turned over the deposits to the bank representative on May 13, 1997 was corroborated by Kay, the branch head of the Solidbank-Gorordo Branch who personally picked up the deposits from Loalde Ayala on May 13 and 14, 1997. Petitioner in fact presented deposit slips showing that, contrary to its policy, cash sales for the day were on several occasions not deposited on the next banking day. Respondent's contention that the Labor Arbiter and the NLRC ignored the Memorandum issued by petitioner on February 29, 1997 indicating her duties and responsibilities which do not include handling cash collection of sales and making deposits with the bank does not lie. It has been established that while a boutique-in-charge is ordinarily not allowed to handle cashiering, she may do so, however, if the need arises. At any rate, Jinky and some of the affiants stated in their affidavits that respondent interfered with cashiering tasks, in violation of company policy. On respondent's claim that petitioner framed her up in retaliation for her refusal to sign a voucher showing receipt of payment of wage differentials which she never received, the same fails. The copy of the voucher dated April 1996 which respondent presented shows that she did, in fact, sign it. IN FINE, the Court finds that respondent's employment was terminated for just cause. It finds, however, that petitioner failed to observe the requirements of procedural due process.

4. ID.; ID.; PETITIONER EMPLOYER'S FAILURE TO COMPLY WITH THE FIRST NOTICE REQUIREMENT ENTITLES RESPONDENT TO INDEMNITY IN THE FORM OF NOMINAL DAMAGES. — The Court of Appeals correctly found, however, that "x x x [i]nstead of complying with the two (2) written notice requirement[s], [herein petitioner] in

one, single notice, ordered [herein respondent's] dismissal. x x x." Such single notice does not comply with the requirements of the law. Petitioner argues, however, that **"respondent was terminated not only for the offenses she committed [in] May 1997 but also for the other offenses** particularly those committed [in] February 1997 **for which she was already required to explain in writing x x x."** The argument fails. For, for the first notice requirement to be satisfied, the following conditions must be met: [T]he first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true. This notice will afford the employee an opportunity to avail [of] all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb[,] his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. x x x Petitioner having failed to comply with the first notice requirement, respondent is, following *Agabon v. National Labor Relations Commission*, entitled to indemnity in the form of nominal damages in the amount of ₱30,000.

APPEARANCES OF COUNSEL

Monteclar Sibi & Trinidad Law Offices for petitioner.
Armando M. Alforque for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1993, Aldeguer and Co., Inc./Loalde Boutique (petitioner), a corporation engaged in the retail and wholesale of Loalde brand products, hired Honeyline Tomboc (respondent).

Petitioner promoted respondent in 1996 as Officer-in-Charge (OIC) of its Loalde Ayala Boutique (Loalde Ayala) in the Ayala Center, Cebu City. As OIC, respondent had the following responsibilities:

1. Monitors daily the inventory status of the stocks per product line and per product class
2. Coordinate with the area manager with the following matters
    a. stock requirement
    b. maintenance of the boutique
    c. new directives of the mall management
    d. customer's problems
    e. other boutique problems
3. Supervises the sales staff assigned in the respective boutiques
4. Implements the company rules and regulations
5. Checks the PR and deposit slips prepared by the cashier against the sales tally report
6. As per internal control, the OIC is not allowed to handle cashiering except [in] emergency cases which must have prior approval by the management. Keyholding of the cash drawer is the responsibility of the cashier.
7. Must at all times submit a written memo of any irregular incident that may occur inside the boutique or if there's any deviation [from] company policy due to circumstances.[1]

After conducting an audit of sales in Loalde Ayala, petitioner concluded that respondent misappropriated ₱28,137.70[2] which is a just cause for termination under Art. 282 of the Labor Code,[3] and accordingly notified her on May 24, 1997 of the

---

[1] NLRC records, p. 22.

[2] *Id.* at 27.

[3] Art. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

termination of her services effective June 24, 1997. Petitioner also notified her as follows:

> Aside from these undeposited cash collections, there are reports submitted by three (3) cashiers who were assigned in the Loalde Boutique that you, being the OIC in the boutique meddles [sic] [with] the cash for deposit, and delaying [sic] such for more than three (3) days. This has prompted the management to believe that you were really using the money.[4] (Underscoring supplied)

Respondent thereupon filed on June 25, 1997 a Complaint [5] before the National Labor Relations Commission (NLRC) against petitioner for illegal dismissal, illegal salary deductions, underpayment of wages, non-payment of 13th month pay, and damages.

In her Position Paper,[6] respondent gave the following version:

After being cleared of her accountabilities on May 19, 1997 by Nenita Pamisa (Nenita), the Accounting Manager of petitioner, she went on leave the following day, her application for the purpose having been earlier approved. On her report back for work, she received a memorandum[7] dated May 24, 1997 informing her that effective May 25, 1997, she was no longer allowed to enter the premises of Loalde Ayala and that she should instead report to petitioner's Head Office at Mandaue City. Complying, she reported to the Head Office where she was assigned to fold and pile dresses in the stockroom.

In the same Position Paper, respondent posited that she was terminated from employment because she refused to sign a

---

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing. (Underscoring supplied)

[4] *Id*. at 27.

[5] *Id*. at 1.

[6] *Id*. at 13-21.

[7] *Id*. at 26.

voucher acknowledging receipt of wage differentials which she did not in fact receive.[8]

From the records, it is gathered that at the scheduled conciliation conference before the Labor Arbiter, petitioner sent no representative.[9] And it twice failed to send any representative at the formal hearing of the case. Further, it failed to submit its position paper,[10] drawing the Labor Arbiter to declare on February 5, 1998 the case submitted for decision on the basis of respondent's position paper.[11] Petitioner was later to file the following day or on February 6, 1998 its position paper[12] *cum* affidavits of Nenita, Kay Malagar (Kay), Jinky Diongson (Jinky), Joanne Bernaldez, and Jocelyn Martinez (Jocelyn),[13] proffering the following version:

It is its policy to require a boutique-in-charge to conduct a "cash count . . . every end of the day or on the first hour of the following day after her day off [and a]ny collection for the day must be deposited without fail on the succeeding banking day."[14]

On May 19, 1997, Nenita audited the sales of Loalde Ayala and discovered undeposited cash sales covered by six receipts detailed as follows:[15]

Official Receipt Number	Date	Amount
6565	April 27, 1997	₱ 8,338.00
6582	May 6, 1997	5,542.50
6586	May 7, 1997	10,035.40
6801	May 11, 1997	12,090.00
6802	May 12, 1997	9,203.40
6803	May 13, 1997	6,844.30

[8] *Id*. at 14-15, 18.

[9] *Id*. at 113.

[10] *Id*. at 40-42.

[11] *Id*. at 42.

[12] *Id*. at 44-52.

[13] *Id*. at 62-64, 73-77, 83-84.

[14] *Id*. at 301.

[15] *Id*. at 45, 60, 62.

When asked to explain, respondent claimed that the amounts were all deposits-in-transit, meaning, the bank had already picked up the amounts but had not yet returned the validated deposit slips.[16]

Respondent having been scheduled to go on vacation leave starting May 20, 1997, she was asked to and did report for work on even date during which she conferred with Nenita and the General Boutique and Sales Manager Cora Anzano. At the conference, respondent maintained that the questioned amounts were already deposited in the bank. Petitioner's bank passbook did not, however, reflect the amounts covered by the last three above-indicated official receipts.[17]

Investigation showed that deposits on May 13, 1997 (comprising the proceeds of sales for May 9, 11, and 12, 1997 which were Friday, Sunday, and election day, respectively) and May 14, 1997 were all check deposits, and that there were no cash deposits even if there were cash sales in the amount of ₱28,137.70 covering the said period.

On her scheduled return to work on May 24, 1997, respondent did not show up; hence, the issuance of the notice of her dismissal which was mailed to her on May 29, 1997.[18]

Respondent committed other irregularities in the past. Thus, on February 24, 1997, she incurred a cash shortage of ₱46,491.35 and when made to account therefor, she claimed that a representative of Solidbank Mandaue picked up the amount on the morning of the same day. The bank denied her claim, however.

Verification with the bank revealed that the cash sales for February 15 and 16, 1997 were deposited only on February 25, 1997, and the cash sales for February 20-23, 1997 were deposited only on February 26, 1997.[19] Respondent later explained

---

[16] *Id*. at 45.

[17] *Id*. at 46, 59-60, 67-68, 70-72.

[18] *Id*. at 87. *Vide id*. at 29.

[19] *Id*. at 80.

that her deviation from petitioner's policy of requiring the deposit of the day's sale on the following banking day arose from the sudden change in the pick-up system of the bank.[20]

On another occasion or on April 24, 1997, respondent instructed an employee, Jocelyn, to issue an official receipt for ₱4,307.25 antedated April 3, 1997, and another for ₱6,030.30 antedated April 18, 1997, to cover amounts which Loalde Ayala received on those dates and which were being traced by the head office.

Still on another occasion, respondent falsified the signature of the bank teller on deposit slips dated April 3, 1997 and April 18, 1997.

By Decision[21] of March 16, 1998, Labor Arbiter Ernesto F. Carreon dismissed respondent's complaint.

The NLRC upheld[22] the Labor Arbiter's Decision and denied respondent's Motion for Reconsideration,[23] prompting her to file a Petition for *Certiorari*[24] before the Court of Appeals.

By Decision[25] of February 27, 2001, the Court of Appeals, concluding that respondent was illegally dismissed, **reversed** the NLRC decision and ordered her reinstatement with full payment of back wages and without loss of seniority rights.[26]

In reversing the NLRC decision, the Court of Appeals found the Labor Arbiter to have "committed grave abuse of discretion when it admitted [herein petitioner's] Position Paper even if submitted almost two (2) months late, aggravated by the fact

---

[20] *Id.* at 47, 80-82.

[21] *Id.* at 118-121.

[22] *Id.* at 161-168.

[23] *Id.* at 169-175, 195.

[24] CA *rollo*, pp. 2-26.

[25] Penned by Court of Appeals Associate Justice Jose L. Sabio, Jr. with the concurrence of Associate Justices Hilarion L. Aquino and Mercedes Gozo-Dadole. *Id.* at 335-345.

[26] *Id.* at 344.

that said Position Paper was unverified and no copy thereof furnished [herein respondent]"[27] (Underscoring partly in the original, partly supplied). And it found respondent to have been illegally dismissed.[28] It further found that respondent was denied due process as she was not afforded a chance to refute the charge of misappropriation against her. Finally, it found the charge to be "a product of [respondent's] refusal . . . to sign a fictitious voucher."[29]

Hence, the present petition[30] faulting the Court of Appeals to have erred:

I. x x x IN HOLDING THAT THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ADMITTED HEREIN PETITIONER'S POSITION PAPER ONE DAY AFTER THE CASE WAS DEEMED SUBMITTED FOR DECISION.

II. x x x IN BRUSHING ASIDE THE FINDINGS OF FACTS OF BOTH THE NLRC AND THE LABOR ARBITER WHICH HELD THE TERMINATION OF RESPONDENT VALID BASED ON SUBSTANTIAL EVIDENCE ON RECORD.

III. x x x IN ORDERING THE REINSTATEMENT OF RESPONDENT TOMBOC AS SUBSTANTIAL EVIDENCE HAS ESTABLISHED THE JUST CAUSE FOR RESPONDENT'S DISMISSAL.

IV. x x x IN HOLDING THAT PETITIONER FAILED TO COMPLY WITH PROCEDURAL DUE PROCESS IN DISMISSING THE RESPONDENT.[31] (Underscoring supplied)

The petition is impressed with merit.

A Labor Arbiter is mandated by law to use every reasonable means to ascertain the facts of each case speedily and objectively,

---

[27] *Id.* at 339-340.

[28] *Id.* at 342-344.

[29] *Id.* at 343.

[30] *Rollo*, pp. 10-44.

[31] *Id.* at 24.

without technicalities of law or procedure, all in the interest of due process.[32] Failure to submit a position paper on time is not a ground for striking it from the records.[33] And lack of verification of petitioner's position paper is only a formal, not a jurisdictional, defect.[34]

In finding the admission of the belatedly filed position paper of petitioner to have been attended with grave abuse of discretion, the Court of Appeals relied on, *inter alia*, the following pronouncement in *Mañebo v. National Labor Relations Commission*:[35]

> x x x Firstly, while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard specific provisions of the Rules which are precisely intended to assist the parties in obtaining just, expeditious, and inexpensive settlement of labor disputes. One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the submission of **verified** position papers **within fifteen days** from the date of the last conference, with **proof of service** thereof on the other parties. The position papers "shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony." **After the submission thereof**, the parties "shall . . . **not be allowed to allege facts, or present evidence** to prove facts, **not referred to** and any cause or causes of action **not included** in the complaint or **position papers**, affidavits, and other documents."[36] (Emphasis and underscoring supplied)

---

[32] *ABS-CBN Broadcasting Network v. Nazareno*, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 222.

[33] *Ibid*.

[34] *Vide Rural Bank of Alaminos Employees Union v. NLRC*, 376 Phil. 18, 31 (1999) (citation omitted).

[35] G.R. No. 107721, January 10, 1994, 229 SCRA 240.

[36] *Id.* at 248.

In finding *Mañebo* to have been denied due process, this Court held:

> [T]he Labor Arbiter gravely abused his discretion in disregarding the rule governing position papers by admitting the **Supplemental** Position Paper and Memorandum, which was **not even accompanied by proof of service to** the petitioner or his counsel, and by **taking into consideration, as basis for his decision, the alleged facts adduced therein and the documents attached thereto**.[37] (Emphasis and underscoring supplied)

As partly reflected in the above-quoted portions of the decision in ***Mañebo***, the Court noted that the labor arbiter principally based its decision on the facts alleged in, and documents attached to the therein respondent-employer's "Supplemental Position Paper and Memorandum," no copy of which was even furnished the petitioner-employee Mañebo to thus deny him due process.

In the case at bar, petitioner submitted its Position Paper on February 6, 1998 or a day after the labor arbiter considered the case submitted for decision. Unlike Mañebo, herein respondent was furnished a copy of petitioner's Position Paper on February 6, 1998.[38] Between February 6, 1998 and March 16, 1998 when the labor arbiter promulgated its decision, respondent does not even appear to have rebutted petitioner's Position Paper.

From the recital of the facts of the case at bar then, respondent was not deprived of due process.

ON THE MERITS, petitioner has shown just cause for the termination of respondent's employment under Art. 282 of the Labor Code on the ground of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."[39]

Nenita's affidavit and audit report are corroborated by petitioner's Solidbank passbook showing that the ₱12,090.00 cash sales for May 11, 1997, ₱9,203.40 cash sales for May 12,

---

[37] *Id*. at 249.

[38] *Vide* NLRC records, p. 52.

[39] LABOR CODE, Article 282 (c).

1997, and ₱6,844.30 cash sales for May 13, 1997 — all duly receipted[40] — were not deposited in petitioner's account with Solidbank.[41]

The claim of Jinky, a cashier, in her affidavit that it was respondent who turned over the deposits to the bank representative on May 13, 1997 was corroborated by Kay, the branch head of the Solidbank-Gorordo Branch who personally picked up the deposits from Loalde Ayala on May 13 and 14, 1997. Petitioner in fact presented deposit slips showing that, contrary to its policy, cash sales for the day were on several occasions not deposited on the next banking day.[42]

Respondent's contention that the Labor Arbiter and the NLRC ignored the Memorandum issued by petitioner on February 29, 1997 indicating her duties and responsibilities which do not include handling cash collection of sales and making deposits with the bank[43] does not lie. It has been established that while a boutique-in-charge is ordinarily not allowed to handle cashiering, she may do so, however, if the need arises.[44] At any rate, Jinky and some of the affiants stated in their affidavits that respondent interfered with cashiering tasks, in violation of company policy.

On respondent's claim that petitioner framed her up in retaliation for her refusal to sign a voucher showing receipt of payment of wage differentials which she never received,[45] the same fails. The copy of the voucher dated April 1996 which respondent presented shows that she did, in fact, sign it.[46]

IN FINE, the Court finds that respondent's employment was terminated for just cause. It finds, however, that petitioner failed to observe the requirements of procedural due process.

---

[40] NLRC records, pp. 70-72.

[41] *Id.* at 66-69.

[42] *Id.* at 91-92.

[43] *Rollo*, p. 128. *Vide* records, p. 22.

[44] *Id.* at 90.

[45] *Id.* at 112.

[46] Vide records, p. 25.

The rules implementing Book VI of the Labor Code require the following in the termination of employment based on just causes as defined in Article 282 of the Labor Code:

x x x x x x x x x

(i) A written notice on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity to which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

x x x x x x x x x[47]

The Court of Appeals correctly found, however, that "x x x [i]nstead of complying with the two (2) written notice requirement[s], [herein petitioner] in one, single notice, ordered [herein respondent's] dismissal x x x."[48] Thus, its May 24, 1997 memorandum to respondent reads:

Effective May 25, 1997, you are not allowed to enter the Ayala Boutique. You have been given a letter of Notice of Termination, and [it] has been advised that you shall directly report to the Head Office at M.L. Quezon St., Cabancalan, Mandaue City upon your return after your vacation leave. Since May 25, 1997 is a Sunday, you are required to report to Mandaue Office on Monday, May 26, 1997.

Should you want to get your personal belongings in the boutique, you have to course everything through the General Boutique & Sales Manager, Ms. Cora G. Anzano. The latter will handle the withdrawal of your personal things in the boutique, and shall turn-over everything to you personally. Ms. Anzano will be at the Ayala Boutique tomorrow morning, May 25, 1997.

---

[47] RULES IMPLEMENTING BOOK VI, Rule I, Section 2.

[48] CA *rollo*, p. 343.

You have to take heed of this directive to avoid a more drastic action.[49]

Such single notice does not comply with the requirements of the law.[50]

Petitioner argues, however, that "**respondent was terminated not only for the offenses she committed [in] May 1997 but also for the other offenses** particularly those committed [in] February 1997 **for which she was already required to explain in writing** x x x."[51] (Emphasis in the original, underscoring supplied). The argument fails. For, for the first notice requirement to be satisfied, the following conditions must be met:

> [T]he first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true.
>
> This notice will afford the employee an opportunity to avail [of] all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb[,] his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. x x x[52]

Petitioner having failed to comply with the first notice requirement, respondent is, following *Agabon v. National Labor Relations Commission*,[53] entitled to indemnity in the form of nominal damages in the amount of ₱30,000.

---

[49] NLRC records, p. 26.

[50] *Vide Perpetual Help Credit Cooperative, Inc. v. Faburada*, 419 Phil. 147, 157 (2001).

[51] *Rollo*, p. 173.

[52] *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, February 4, 2005, 450 SCRA 465, 477 (citation omitted).

[53] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

WHEREFORE, the February 27, 2001 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The January 12, 1999 Decision of the National Labor Relations Commission is *REINSTATED* with the *MODIFICATION* that petitioner, Aldeguer &. Co., Inc./Loalde Boutique, is *ORDERED* to pay respondent, Honeyline Tomboc, nominal damages in the amount of ₱30,000.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 149338. July 28, 2008]

UNLAD RESOURCES DEVELOPMENT CORPORATION, UNLAD RURAL BANK OF NOVELETA, INC., UNLAD COMMODITIES, INC., HELENA Z. BENITEZ, and CONRADO L. BENITEZ II, *petitioners, vs.* **RENATO P. DRAGON, TARCISIUS R. RODRIGUEZ, VICENTE D. CASAS, ROMULO M. VIRATA, FLAVIANO PERDITO, TEOTIMO BENITEZ, ELENA BENITEZ, and ROLANDO SUAREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; THE RESCISSION OF THE MEMORANDUM OF AGREEMENT IS A CAUSE OF ACTION WITHIN THE JURISDICTION OF THE TRIAL COURTS, NOTWITHSTANDING THE FACT THAT THE PARTIES INVOLVED ARE ALL DIRECTORS OF THE SAME CORPORATION. — The main issue in this case is the rescission of the Memorandum of Agreement. This is to

be distinguished from respondents' allegation of the alleged mismanagement and dissipation of corporate assets by the petitioners which is based on the prayer for receivership over the bank. The two issues, albeit related, are obviously separate, as they pertain to different acts of the parties involved. The issue of receivership does not arise from the parties' obligations under the Memorandum of Agreement, but rather from specific acts attributed to petitioners as members of the Board of Directors of the Bank. Clearly, the rescission of the Memorandum of Agreement is a cause of action within the jurisdiction of the trial courts, notwithstanding the fact that the parties involved are all directors of the same corporation.

2. ID.; ID.; ISSUE OF JURISDICTION HAS BEEN RENDERED MOOT BY REPUBLIC ACT NO. 8799 OR THE *SECURITIES REGULATION CODE* WHICH TRANSFERRED THE JURISDICTION OVER INTRA-CORPORATE DISPUTES TO THE REGIONAL TRIAL COURT. — The petitioners insist that the trial court had no jurisdiction over the complaint because the issues involved are intra-corporate in nature. This argument miserably fails to persuade. The law in force at the time of the filing of the case was Presidential Decree (P.D.) 902-A, Section 5(b) of which vested the Securities and Exchange Commission with original and exclusive jurisdiction to hear and decide cases involving controversies arising out of intra-corporate relations. It is well to remember that the respondents had actually filed with the SEC a case against the petitioners which, however, was dismissed for lack of jurisdiction due to the pendency of the case before the RTC. Be that as it may, this point has been rendered moot by Republic Act (R.A.) No. 8799, also known as the *Securities Regulation Code*. This law, which took effect in 2000, has transferred jurisdiction over such disputes to the RTC. Consequently, whether the cause of action stems from a contractual dispute or one that involves intra-corporate matters, the RTC already has jurisdiction over this case. In this light, the question of whether the doctrine of estoppel by laches applies, as enunciated by this Court in *Tijam v. Sibonghanoy*, no longer finds relevance.

3. CIVIL LAW; PRESCRIPTION OF ACTIONS; THE ORIGINAL COMPLAINT WAS FILED WELL WITHIN THE PRESCRIPTIVE PERIOD; ARTICLE 1144 OF THE CIVIL CODE SPECIFICALLY PROVIDES THAT THE 10-YEAR

PERIOD IS COUNTED FROM THE TIME THE RIGHT OF ACTION ACCRUES. — Petitioners further contend that the action for rescission has prescribed under Article 1389 of the Civil Code, which provides: Article 1389. The action to claim rescission must be commenced within four years x x x. This is an erroneous proposition. Article 1389 specifically refers to rescissible contracts as, clearly, this provision is under the chapter entitled "Rescissible Contracts." The Memorandum of Agreement subject of this controversy does not fall under the above enumeration. Accordingly, the prescriptive period that should apply to this case is that provided for in Article 1144, to wit: Article 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; x x x Based on the records of this case, the action was commenced on July 3, 1987, while the Memorandum of Agreement was entered into on December 29, 1981. Article 1144 specifically provides that the 10-year period is counted from "the time the right of action accrues." The right of action accrues from the moment the breach of right or duty occurs. Thus, the original Complaint was filed well within the prescriptive period.

4. ID.; OBLIGATIONS AND CONTRACTS; RESCISSION OF THE SUBJECT MEMORANDUM OF AGREEMENT IS PROPER. — There is no question that petitioners herein failed to fulfill their obligation under the Memorandum of Agreement. Even they admit the same, albeit laying the blame on respondents. It is true that respondents increased the Rural Bank's authorized capital stock to only ₱5 million, which was not enough to accommodate the ₱4.8 million worth of stocks that petitioners were to subscribe to and pay for. However, respondents' failure to fulfill their undertaking in the agreement would have given rise to the scenario contemplated by Article 1191 of the Civil Code. Thus, petitioners should have exacted fulfillment from the respondents or asked for the rescission of the contract instead of simply not performing their part of the Agreement. But in the course of things, it was the respondents who availed of the remedy under Article 1191, opting for the rescission of the Agreement in order to regain control of the Rural Bank.

5. ID.; ID.; RESCISSIBLE CONTRACTS; MUTUAL RESTITUTION OR BRINGING THE PARTIES BACK TO THEIR ORIGINAL STATUS BEFORE THE INCEPTION OF THE

CONTRACT IS THE LEGAL CONSEQUENCE OF RESCISSION. — Mutual restitution is required in cases involving rescission under Article 1191. This means bringing the parties back to their original status prior to the inception of the contract. Article 1385 of the Civil Code provides, thus: ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore. Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. In this case, indemnity for damages may be demanded from the person causing the loss. This Court has consistently ruled that this provision applies to rescission under Article 1191: [S]ince Article 1385 of the Civil Code expressly and clearly states that "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest," the Court finds no justification to sustain petitioners' position that said Article 1385 does not apply to rescission under Article 1191. Rescission has the effect of "unmaking a contract, or its *undoing from the beginning, and not merely its termination.*" Hence, rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made. Accordingly, when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation. The rescission has the effect of abrogating the contract in all parts. Clearly, the petitioners failed to fulfill their end of the agreement, and thus, there was just cause for rescission. With the contract thus rescinded, the parties must be restored to the *status quo ante,* that is, before they entered into the Memorandum of Agreement.

6. ID.; DAMAGES; ACTUAL OR COMPENSATORY; BASIS FOR AWARD, ADEQUATELY ESTABLISHED. — The trial court's Decision mentioned that the "evidence is clear and convincing that Plaintiffs (herein respondents) suffered actual compensatory damages amounting to Four Million Six Hundred One Thousand Seven Hundred Sixty-Five and 38/100 Pesos (₱4,601,765.38) moral damages and attorney's fees." Though not discussed in the body of the Decision, the records show that the amount of ₱4,601,765.38 pertains to actual losses incurred by respondents as a result of petitioners' non-compliance with their undertaking under the Memorandum of Agreement. On this point, respondent Dragon presented testimonial and documentary evidence to prove the actual amount of damages. More importantly, petitioners never raised in issue before the CA this award of actual compensatory damages. They did not raise the matter of damages in their Appellants' Brief, while in their Motion for Reconsideration, they questioned only the award of moral and exemplary damages, not the award of actual damages. Even in the present Petition for Review, what petitioners raised was the propriety of the award of moral and exemplary damages and attorney's fees.

7. ID.; ID.; MORAL DAMAGES; ACTS ATTRIBUTED TO PETITIONERS AS DIRECTORS OF THE RURAL BANK MANIFESTLY PREJUDICE RESPONDENTS CAUSING DETRIMENT TO THEIR STANDING AS DIRECTORS AND STOCKHOLDERS OF THE BANK. — On the grant of moral and exemplary damages and attorney's fees, we note that the trial court's Decision did not discuss the basis for the award. No mention of these damages awarded — or their factual basis — is made in the body of the Decision, only in the dispositive portion. Be that as it may, we have examined the records of the case and found that the award must be sustained. It should be remembered that there are two separate causes of action in this case: one for rescission of the Memorandum of Agreement and the other for receivership based on alleged mismanagement of the company by the plaintiffs. While the award of actual compensatory damages was based on the breach of duty under the Memorandum of Agreement, the award of moral damages appears to be based on petitioners' mismanagement of the company when they became members of the Board of Directors of the Rural Bank. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation,

wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of precise pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. Article 2220 of the Civil Code further provides that moral damages may be recovered in case of a breach of contract where the defendant acted in bad faith. To award moral damages, a court must be satisfied with proof of the following requisites: (1) an injury — whether physical, mental, or psychological — clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission of the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219. Accordingly, based upon the findings of the trial court, it is clear that respondents are entitled to moral damages. The acts attributed to the petitioners as directors of the Rural Bank manifestly prejudiced the respondents causing detriment to their standing as directors and stockholders of the Rural Bank.

8. ID.; ID.; EXEMPLARY DAMAGES; SINCE RESPONDENTS ARE ENTITLED TO COMPENSATORY AND MORAL DAMAGES, THE AWARD OF EXEMPLARY DAMAGES IS IN ORDER; AWARD OF EXEMPLARY DAMAGES IS IN ITSELF SUFFICIENT JUSTIFICATION FOR AWARD OF ATTORNEY'S FEES. — Exemplary damages cannot be recovered as a matter of right. While these need not be proved, respondents must show that they are entitled to moral, temperate or compensatory damages before the court may consider the question of awarding exemplary damages. We find that respondents are indeed entitled to moral damages; thus, the award for exemplary damages is in order. Anent the award for attorney's fees, Article 2208 of the Civil Code states: In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded. Hence, the award of exemplary damages is in itself sufficient justification for the award of attorney's fees.

APPEARANCES OF COUNSEL

Loyola Rodriquez Delos Santos & Naidas Law Offices for petitioners.

Villaraza & Angcangco Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the November 29, 2000 Decision[1] and August 2, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 54226.

The facts, as found by the CA, are as follows:

> On December 29, 1981, the Plaintiffs (herein respondents) and defendant (herein petitioner) Unlad Resources, through its Chairman[,] Helena Z. Benitez[,] entered into a Memorandum of Agreement wherein it is provided that [respondents], as controlling stockholders of the Rural Bank [of Noveleta] shall allow Unlad Resources to invest four million eight hundred thousand pesos (₱4,800,000.00) in the Rural Bank in the form of additional equity. On the other hand, [petitioner] Unlad Resources bound itself to invest the said amount of 4.8 million pesos in the Rural Bank; upon signing, it was, likewise, agreed that [petitioner] Unlad Resources shall subscribe to a minimum of four hundred eighty thousand pesos (₱480,000.00) (sic) common or preferred non-voting shares of stock with a total par value of four million eight hundred thousand pesos (₱4,800,000.00) and pay up immediately one million two hundred thousand pesos (₱1,200,000.00) for said subscription; that the [respondents], upon the signing of the said agreement shall transfer control and management over the Rural Bank to Unlad Resources. According to the [respondents], immediately after the signing of the agreement, they complied with their obligation and transferred control of the

---

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eloy R. Bello, Jr. and Eliezer R. De los Santos, concurring; *rollo*, pp. 52-63.

[2] *Id.* at 65.

Rural Bank to Unlad Resources and its nominees and the Bank was renamed the Unlad Rural Bank of Noveleta, Inc. However, [respondents] claim that despite repeated demands, Unlad Resources has failed and refused to comply with their obligation under the said Memorandum of Agreement when it did not invest four million eight hundred thousand pesos (₱4,800,000.00) in the Rural Bank in the form of additional equity and, likewise, it failed to immediately infuse one million two hundred thousand pesos (₱1,200,000.00) as paid in capital upon signing of the Memorandum of Agreement.

On August 10, 1984, the Board of Directors of [petitioner] Unlad Resources passed Resolution No. 84-041 authorizing the President and the General Manager to lease a mango plantation situated in Naic, Cavite. Pursuant to this Resolution, the Bank as [lessee] entered into a Contract of Lease with the [petitioner] Helena Z. Benitez as [lessor]. The management of the mango plantation was undertaken by Unlad Commodities, Inc., a subsidiary of Unlad Resources[,] under a Management Contract Agreement. The Management Contract provides that Unlad Commodities, Inc. would receive eighty percent (80%) of the net profits generated by the operation of the mango plantation while the Bank's share is twenty percent (20%). It was further agreed that at the end of the lease period, the Rural Bank shall turn over to the lessor all permanent improvements introduced by it on the plantation.

x x x x x x x x x

On May 20, 1987, [petitioner] Unlad Rural Bank wrote [respondents] regarding [the] Central Bank's approval to retire its [Development Bank of the Philippines] preferred shares in the amount of ₱219,000.00 and giving notice for subscription to proportionate shares. The [respondents] objected on the grounds that there is already a sinking fund for the retirement of the said DBP-held preferred shares provided for annually and that it could deprive the Rural Bank of a cheap source of fund. (sic)

[Respondents] alleged compliance with all of their obligations under the Memorandum of Agreement in that they have transferred control and management over the Rural bank to the [petitioners] and are ready, willing and able to allow [petitioners] to subscribe to a minimum of four hundred eighty thousand (₱480,000.00) (sic) common or preferred non-voting shares of stocks with a total par value of four million eight hundred thousand pesos (₱4,800,000.00) in the Rural Bank. However, [petitioners] have failed and refused to

subscribe to the said shares of stock and to pay the initial amount of one million two hundred thousand pesos (₱1,200,000.00) for said subscription.[3]

On July 3, 1987, herein respondents filed before the Regional Trial Court (RTC) of Makati City, Branch 61 a Complaint[4] for rescission of the agreement and the return of control and management of the Rural Bank from petitioners to respondents, plus damages. After trial, the RTC rendered a Decision,[5] the dispositive portion of which provides:

> WHEREFORE, Premises Considered, judgment is hereby rendered, as follows:
>
> 1. The Memorandum of Agreement dated 29 December 1991 (sic) is hereby declared rescinded and:
>
> (a) Defendant Unlad Resources Development Corporation is hereby ordered to immediately return control and management over the Rural Bank of Noveleta, Inc. to Plaintiffs; and
>
> (b) Unlad Rural Bank of Noveleta, Inc. is hereby ordered to return to Defendants the sum of One Million Three Thousand Seventy Pesos (₱1,003,070.00)
>
> 2. The Director for Rural Banks of the Bangko Sentral ng Pilipinas is hereby appointed as Receiver of the Rural Bank;
>
> 3. Unlad Rural Bank of Noveleta, Inc. is hereby enjoined from placing the retired DBP-held preferred shares available for subscription and the same is hereby ordered to be placed under a sinking fund;
>
> 4. Defendant Unlad Resources Development Corporation is hereby ordered to pay plaintiffs the following:
>
> (a) actual compensatory damages amounting to Four Million Six Hundred One Thousand Seven Hundred Sixty-Five and 38/100 Pesos (₱4,601,765.38);
>
> (b) moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00);

[3] *Id*. at 52-54.

[4] Records, pp. 1-19.

[5] Penned by Judge Roberto C. Diokno, *id*. at 959-960.

(c) exemplary and corrective damages in the amount of One Hundred Thousand Pesos (₱100,000.00); and

(d) attorney's fees in the sum of (₱100,000.00), plus cost of suit.

SO ORDERED.[6]

Herein petitioners appealed the ruling to the CA. Respondents filed a Motion to Dismiss and, subsequently, a Supplemental Motion to Dismiss, which were both denied. Later, however, the CA, in a Decision dated November 29, 2000, dismissed the appeal for lack of merit and affirmed the RTC Decision in all respects. Petitioners' motion for reconsideration was denied in CA Resolution dated August 2, 2001.

Petitioners are now before this Court alleging that the CA committed a grave and serious reversible error in issuing the assailed Decision. Petitioners question the jurisdiction of the trial court, something they have done from the beginning of the controversy, contending that the issues that respondents raised before the trial court are intra-corporate in nature and are, therefore, beyond the jurisdiction of the trial court. They point out that respondents' complaint charged them with mismanagement and alleged dissipation of the assets of the Rural Bank. Since the complaint challenges corporate actions and decisions of the Board of Directors and prays for the recovery of the control and management of the Rural Bank, these matters fall outside the jurisdiction of the trial court. Thus, they posit that the judgment of the trial court, as affirmed by the CA, is null and void and may be impugned at any time.

Petitioners further argue that the action instituted by respondents had already prescribed, because Article 1389 of the Civil Code provides that an action for rescission must be commenced within four years. They claim that the trial court and the CA mistakenly applied Article 1144 of the Civil Code which treats of prescription of actions in general. They submit that Article 1389, which deals specifically with actions for rescission, is the applicable law.

---

[6] *Rollo,* pp. 79-80.

Moreover, petitioners assert that they have fully complied with their undertaking under the subject Memorandum of Agreement, but that the undertaking has become a "legal and factual impossibility" because the authorized capital stock of the Rural Bank was increased from ₱1.7 million to only ₱5 million, and could not accommodate the subscription by petitioners of ₱4.8 million worth of shares. Such deficiency, petitioners contend, is with the knowledge and approval of respondent Renato P. Dragon and his nominees to the Board of Directors.

Petitioners, without conceding the propriety of the judgment of rescission, also argue that the subject Memorandum of Agreement could not just be ordered rescinded without the corresponding order for the restitution of the parties' total contributions and/or investments in the Rural Bank. Finally, they assail the award for moral and exemplary damages, as well as the award for attorney's fees, as bereft of factual and legal bases given that, in the body of the Decision, it was merely stated that respondents suffered moral damages without any discussion or explanation of, nor any justification for such award. Likewise, the matter of attorney's fees was not at all discussed in the body of the Decision. Petitioners claim that pursuant to the prevailing rule, attorney's fees cannot be recovered in the absence of stipulation.

On the other hand, respondents declare that immediately after the signing of the Memorandum of Agreement, they complied with their obligation and transferred control of the Rural Bank to petitioner Unlad Resources and its nominees, but that, despite repeated demands, petitioners have failed and refused to comply with their concomitant obligations under the Agreement.

Respondents narrate that shortly after taking over the Rural Bank, petitioners Conrado L. Benitez II and Jorge C. Cerbo, as President and General Manager, respectively, entered into a Contract of Lease over the Naic, Cavite mango plantation, and that, as a consequence of this venture, the bank incurred expenses amounting to ₱475,371.57, equivalent to 25.76% of its capital and surplus. The respondents further assert that the Central Bank found this undertaking not inherently connected with bona

fide rural banking operations, nor does it fall within the allied undertakings permitted under Section 26 of Central Bank Circular No. 741 and Section 3379 of the Manual of Regulations of the Central Bank. Thus, respondents contend that this circumstance, coupled with the fact that petitioners Helena Z. Benitez and Conrado L. Benitez II were also stockholders and members of the Board of Directors of Unlad Resources, Unlad Rural Bank, and Unlad Commodities at that time, is adequate proof that the Rural Bank's management had every intention of diverting, dissipating, and/or wasting the bank's assets for petitioners' own gain.

They likewise allege that because of the failure of petitioners to comply with their obligations under the Memorandum of Agreement, respondents, with the exception of Tarcisius Rodriguez, lodged a complaint with the Securities and Exchange Commission (SEC), seeking rescission of the Agreement, damages, and the appointment of a management committee, but the SEC dismissed the complaint for lack of jurisdiction.

Furthermore, when the Rural Bank informed respondents of the Central Bank's approval of its plan to retire its DBP-held preferred shares, giving notices for subscription to proportionate shares, respondents objected on the ground that there was already a sinking fund for the retirement of said shares provided for annually, and that the retirement would deprive the petitioner Rural Bank of a cheap source of fund. It was at that point, respondents claim, that they instituted the aforementioned Complaint against petitioners before the RTC of Makati.

The respondents also seek the outright dismissal of this Petition for lack of verification as to petitioners Helena Z. Benitez and Conrado L. Benitez II; lack of proper verification as to petitioners Unlad Resources Development Corporation, Unlad Rural Bank of Noveleta, Inc., and Unlad Commodities, Inc.; lack of proper verified statement of material dates; and lack of proper sworn certification of non-forum shopping.

They support the proposition that *Tijam v. Sibonghanoy*[7] applies, and that petitioners are indeed estopped from questioning

[7] 131 Phil. 556 (1968).

the jurisdiction of the trial court. They also share the lower court's view that it is Article 1144 of the Civil Code, and not Article 1389, that is applicable to this case. Finally, respondents allege that the failure of petitioner Unlad Resources to comply with its undertaking under the Agreement, as uniformly found by the trial court and the CA, may no longer be assailed in the instant Petition, and that the award of moral and exemplary damages and attorney's fees is justified.

The Petition is bereft of merit. We uphold the Decision of the CA affirming that of the RTC.

First, the subject of jurisdiction. The main issue in this case is the rescission of the Memorandum of Agreement. This is to be distinguished from respondents' allegation of the alleged mismanagement and dissipation of corporate assets by the petitioners which is based on the prayer for receivership over the bank. The two issues, albeit related, are obviously separate, as they pertain to different acts of the parties involved. The issue of receivership does not arise from the parties' obligations under the Memorandum of Agreement, but rather from specific acts attributed to petitioners as members of the Board of Directors of the Bank. Clearly, the rescission of the Memorandum of Agreement is a cause of action within the jurisdiction of the trial courts, notwithstanding the fact that the parties involved are all directors of the same corporation.

Still, the petitioners insist that the trial court had no jurisdiction over the complaint because the issues involved are intra-corporate in nature.

This argument miserably fails to persuade. The law in force at the time of the filing of the case was Presidential Decree (P.D.) 902-A, Section 5(b) of which vested the Securities and Exchange Commission with original and exclusive jurisdiction to hear and decide cases involving controversies arising out of intra-corporate relations.[8] Interpreting this statutorily conferred jurisdiction on the SEC, this Court had occasion to state:

---

[8] P.D. 902-A, Sec. 5 (b).

Nowhere in said decree do we find even so much as an [intimation] that absolute jurisdiction and control is vested in the Securities and Exchange Commission in *all* matters affecting corporations. To uphold the respondent's arguments would remove without legal imprimatur from the regular courts all conflicts over matters involving or affecting corporations, regardless of the nature of the transactions which give rise to such disputes. The courts would then be divested of jurisdiction not by reason of the nature of the dispute submitted to them for adjudication, but solely for the reason that the dispute involves a corporation. This cannot be done.[9]

It is well to remember that the respondents had actually filed with the SEC a case against the petitioners which, however, was dismissed for lack of jurisdiction due to the pendency of the case before the RTC.[10] The SEC's Order dismissing the respondents' complaint is instructive:

From the foregoing allegations, it is apparent that the present action involves two separate causes of action which are interrelated, and the resolution of which hinges on the very document sought to be rescinded. The assertion that the defendants failed to comply with their contractual undertaking and the claim for rescission of the contract by the plaintiffs has, in effect, put in issue the very status of the herein defendants as stockholders of the Rural Bank. The issue as to whether or not the defendants are stockholders of the Rural Bank is a pivotal issue to be determined on the basis of the Memorandum of Agreement. It is a prejudicial question and a logical antecedent to confer jurisdiction to this Commission.

It is to be noted, however, that determination of the contractual undertaking of the parties under a contract lies with the Regional Trial Courts and not with this Commission. x x x[11]

Be that as it may, this point has been rendered moot by Republic Act (R.A.) No. 8799, also known as the *Securities Regulation Code*. This law, which took effect in 2000, has

---

[9] *DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.*, 217 Phil. 280, 287.

[10] Records, pp. 426-429.

[11] Order of the SEC dated March 2, 1987, records, pp. 428-429.

transferred jurisdiction over such disputes to the RTC. Specifically, R.A. 8799 provides:

Sec. 5. Powers and Functions of the Commission

x x x x x x x x x

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.

Section 5 of P.D. No. 902-A reads, thus:

Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices and schemes employed by or any acts of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointment of directors, trustees, officers or managers of such corporations, partnerships or associations.

Consequently, whether the cause of action stems from a contractual dispute or one that involves intra-corporate matters, the RTC already has jurisdiction over this case. In this light, the question of whether the doctrine of estoppel by laches applies, as enunciated by this Court in *Tijam v. Sibonghanoy*, no longer finds relevance.

Second, the issue of prescription. Petitioners further contend that the action for rescission has prescribed under Article 1389 of the Civil Code, which provides:

> Article 1389. The action to claim rescission must be commenced within four years x x x.

This is an erroneous proposition. Article 1389 specifically refers to rescissible contracts as, clearly, this provision is under the chapter entitled "Rescissible Contracts."

In a previous case,[12] this Court has held that Article 1389:

> applies to rescissible contracts, as enumerated and defined in Articles 1380 and 1381. We must stress however, that the "rescission" in Article 1381 is not akin to the term "rescission" in Article 1191 and Article 1592. In Articles 1191 and 1592, the rescission is a principal action which seeks the resolution or cancellation of the contract while in Article 1381, the action is a subsidiary one limited to cases of rescission for lesion as enumerated in said article.
>
> The prescriptive period applicable to rescission under Articles 1191 and 1592, is found in Article 1144, which provides that the action upon a written contract should be brought within ten years from the time the right of action accrues.

Article 1381 sets out what are rescissible contracts, to wit:

> Article 1381. The following contracts are rescissible:
>
> (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

---

[12] *Iringan v. Court of Appeals*, 418 Phil. 286, 296-297 (2001) (Citations omitted).

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

The Memorandum of Agreement subject of this controversy does not fall under the above enumeration. Accordingly, the prescriptive period that should apply to this case is that provided for in Article 1144, to wit:

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

x x x x x x x x x

Based on the records of this case, the action was commenced on July 3, 1987, while the Memorandum of Agreement was entered into on December 29, 1981. Article 1144 specifically provides that the 10-year period is counted from "the time the right of action accrues." The right of action accrues from the moment the breach of right or duty occurs.[13] Thus, the original Complaint was filed well within the prescriptive period.

We now proceed to determine if the trial court, as affirmed by the CA, correctly ruled for the rescission of the subject Agreement.

Petitioners contend that they have fully complied with their obligation under the Memorandum of Agreement. They allege that due to respondents' failure to increase the capital stock of

---

[13] *De Castro v. Court of Appeals*, 434 Phil. 53, 68 (2000), citing Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, 1992 ed., p. 44.

the corporation to an amount that will accommodate their undertaking, it had become impossible for them to perform their end of the Agreement.

Again, petitioners' contention is untenable. There is no question that petitioners herein failed to fulfill their obligation under the Memorandum of Agreement. Even they admit the same, albeit laying the blame on respondents.

It is true that respondents increased the Rural Bank's authorized capital stock to only ₱5 million, which was not enough to accommodate the ₱4.8 million worth of stocks that petitioners were to subscribe to and pay for. However, respondents' failure to fulfill their undertaking in the agreement would have given rise to the scenario contemplated by Article 1191 of the Civil Code, which reads:

> Article 1191. The power to rescind reciprocal obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Thus, petitioners should have exacted fulfillment from the respondents or asked for the rescission of the contract instead of simply not performing their part of the Agreement. But in the course of things, it was the respondents who availed of the remedy under Article 1191, opting for the rescission of the Agreement in order to regain control of the Rural Bank.

Having determined that the rescission of the subject Memorandum of Agreement was in order, the trial court ordered petitioner Unlad Resources to return to respondents the

management and control of the Rural Bank and for the latter to return the sum of ₱1,003,070.00 to petitioners.

Mutual restitution is required in cases involving rescission under Article 1191. This means bringing the parties back to their original status prior to the inception of the contract.[14] Article 1385 of the Civil Code provides, thus:

> ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore.
>
> Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.
>
> In this case, indemnity for damages may be demanded from the person causing the loss.

This Court has consistently ruled that this provision applies to rescission under Article 1191:

> [S]ince Article 1385 of the Civil Code expressly and clearly states that "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest," the Court finds no justification to sustain petitioners' position that said Article 1385 does not apply to rescission under Article 1191.[15]

Rescission has the effect of "unmaking a contract, or its *undoing from the beginning, and not merely its termination.*"[16] Hence, rescission creates the obligation to return the object of

---

[14] See *Laperal v. Solid Homes, Inc.*, G.R. No. 130913, June 21, 2005, 460 SCRA 375, 385, citing *Velarde v. Court of Appeals*, 361 SCRA 56, 69-70 (2001). See also *Reyes v. Lim*, 456 Phil. 1, 12 (2003); *Asuncion v. Evangelista*, 375 Phil. 328, 356 (1999).

[15] *Laperal v. Solid Homes, Inc., supra*, at 386-387.

[16] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, G.R. No. 157480, May 6, 2005, 458 SCRA 164, 178, citing Black's *Law Dictionary*, 6th ed., p. 1306.

the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made.[17]

Accordingly, when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation. The rescission has the effect of abrogating the contract in all parts.[18]

Clearly, the petitioners failed to fulfill their end of the agreement, and thus, there was just cause for rescission. With the contract thus rescinded, the parties must be restored to the *status quo ante*, that is, before they entered into the Memorandum of Agreement.

Finally, we must resolve the question of the propriety of the award for damages and attorney's fees.

The trial court's Decision mentioned that the "evidence is clear and convincing that Plaintiffs (herein respondents) suffered actual compensatory damages amounting to Four Million Six Hundred One Thousand Seven Hundred Sixty-Five and 38/100 Pesos (₱4,601,765.38) moral damages and attorney's fees."

Though not discussed in the body of the Decision, the records show that the amount of ₱4,601,765.38 pertains to actual losses incurred by respondents as a result of petitioners' non-compliance with their undertaking under the Memorandum of Agreement. On this point, respondent Dragon presented testimonial and documentary evidence to prove the actual amount of damages, thus:

---

[17] *Spouses Velarde v. Court of Appeals*, 413 Phil. 360, 375 (2001).

[18] *Carrascoso v. Court of Appeals*, G.R. No. 123672 and *Philippine Long Distance Telephone Company v. Leviste*, G.R. No. 164489, December 14, 2005, 477 SCRA 666, 703, citing IV A. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* (1997 ed.), pp. 180-181.

Atty. Cruz

Q: Was there any consequence to you Mr. Dragon due to any breach of the agreement marked as Exhibit A?

A: Yes sir I could have earned thru the shares of stock that I have, or we have or we had by this time amounting to several millions pesos (sic). They have only put in the whole amount that we have agreed upon (sic).

Q: In this connection did you cause computation of these losses that you incured (sic)?

A: Yes sir.

x x x x x x x x x

Q: Will you please kindly go through this computation and explain the same to the Honorable Court?

A: Number 1 is an Organ (sic) income from the sale of 60% (sic) at only Three Hundred Ninety Nine Thousand Two hundred for Nineteen Thousand Nine Hundred Sixty shares which should have been sold if it were sold to others for ₱50.00 each for a total of Nine Hundred Ninety Eight Thousand but sold to them for Three Hundred Ninety nine (sic) Thousand two (sic) Hundred only and of which only Three Hundred Twenty Four Thousand Six Hundred was paid to me. Therefore, there was a difference of Six Hundred Seven Three (sic) Thousand Four Hundred (₱673,400.00). On the basis of the commulative (sic) lost income every year from March 1982 from the amount of Seven Six Hundred (sic) Seventy Three Thousand four (sic) Hundred (₱673,400.) (sic) there would be a discommulative (sic) lost (sic) of One Million Ninety Three Thousand Nine Hundred Fifty Two Pesos and forty two (sic) centavos (₱1,093,952.42). Please note that the interest imputed is only at 12% per annum but it should had (sic) been much higher. In 1984 to 1986 (sic) alone rates went as higher (sic) as 40% per annum from the so called (sic) Jobo Bills and yet we only computed the imputed income or lost income at 12% per annum and then there is a 40% participation on the unrealized earnings due to their failure to put in an stabilized (sic) earnings. You will note that if they put in 4.8 million Pesos and it would be earning money, 40% of that will go to us because

> 40% of the bank would be ours and 60% would be there (sic). But because they did put in the 4.8 million our 40% did not earn up to that extent and computed again on the basis of 12% the amount (sic) on the commulative (sic) basis up to September 1990 is 2 million three hundred fifty two thousand sixty five pesos and four centavos (sic). (₱2,352,065.04). You will note again that the average return of investment of any Cavite based (sic) Rural Bank has been no less than 20% or about 30% per annum. And we computed only the earnings at 12%.
>
> x x x x x x x x x
>
> There were loans granted fraudulently to members of the board and some borrowers which were not all charged interest for several years and on this basis we computed a 40% shares (sic) on the foregone income interest income (sic) on all these fraudulently granted loans, without interest being collected and none a project (sic) among a plantation project (sic), which was funded by the bank but nothing was given back to the bank for several hundred thousand of pesos (sic). And we arrived an (sic) estimate of the foregone interest income a total of One Million Two Hundred Five Thousand Eight Hundred Sixty None Pesos and eighty one (sic) centavos and 40 percent share of this (sic) would be Four Hundred Eighty Two Thousand Three Hundred Forty Seven Pesos and Ninety Two Centavos. All in all our estimate of the damages we have suffered is Four Million Six Hundred one (sic) Thousand Seven Hundred Sixty Five Pesos and thirty eight (sic) centavos (₱4,601,765.38).[19]

More importantly, petitioners never raised in issue before the CA this award of actual compensatory damages. They did not raise the matter of damages in their Appellants' Brief, while in their Motion for Reconsideration, they questioned only the award of moral and exemplary damages, not the award of actual damages. Even in the present Petition for Review, what petitioners raised was the propriety of the award of moral and exemplary damages and attorney's fees.

---

[19] TSN, September 20, 1990, pp. 998-1006.

On the grant of moral and exemplary damages and attorney's fees, we note that the trial court's Decision did not discuss the basis for the award. No mention of these damages awarded — or their factual basis — is made in the body of the Decision, only in the dispositive portion. Be that as it may, we have examined the records of the case and found that the award must be sustained.

It should be remembered that there are two separate causes of action in this case: one for rescission of the Memorandum of Agreement and the other for receivership based on alleged mismanagement of the company by the plaintiffs. While the award of actual compensatory damages was based on the breach of duty under the Memorandum of Agreement, the award of moral damages appears to be based on petitioners' mismanagement of the company when they became members of the Board of Directors of the Rural Bank.

Thus, the trial court said:

> Under the Rural Bank's management, a systematic diversion of the bank's assets was conceived whereby: (a) The Rural Bank's funds would be funneled in the development and improvements of the Benitez Mango Plantation in the guise of an investment in said plantation; (b) Of the net profits earned from the plantation's operations, the Rural Bank's share therein, although it shoulders all of the financial risks, would be a measly twenty percent (20%) thereof while UCI, without investing a single centavo, would earn eighty percent (80%) of the said profits. Thus, the bulk of the profits of the mango plantation was also sought to be diverted to an entity wherein Helena Z. Benitez and Conrado L. Benitez II are not only principal stockholders but also the Chairman of the Board of Directors and President, respectively. Moreover, Defendant Helena Z. Benitez would be entitled to receive, under the lease contract, rentals in the total amount of Three Hundred Thousand Pesos (₱300,000.00) or ten percent (10%) of gross profits, whichever is higher. (c) Finally, at the end of the lease period, the Rural Bank was obliged to turn over to the lessor (Helena Z. Benitez) all permanent improvements introduced by it on the plantation at no cost to Ms. Benitez.
>
> Further, in its report dated March 13, 1985, the [Central Bank] after conducting its general examination upon the Rural Bank ordered the latter to "explain satisfactorily why the bank engage (sic) in an

undertaking not inherently connected with [bona fide] rural banking operations nor within the allowed allied undertakings," contrary to the provisions of Section 3379 of the CB Manual of Regulations and Section 26 of CB Circular No. 741, otherwise known as the "Circular on Rural Banks[.]"

The aforestated CB report states that "total exposure to this project now amounts to ₱475,371.57 or 25.76% of its capital and surplus[.]" Notwithstanding a finding by the CB of the undertaking's illegality, the defendants nevertheless persisted in pursuing the Mango Plantation Project and never acceded to the call of [the] CB for it to desist from further implementing the said project. It was only after another letter from the CB was received when defendant finally shelved the mango plantation project.

The result of the aforestated report, as well as the actuations of the Defendants in not yielding to the order of the CB, adequately establishes not only a violation of CB Rules (specifically Section 26, Circular 741 and Section 3379 of the CB Manual of Regulations, but also, that it has caused undue damage both to the Rural bank as well as its stockholders.

The initial CB report should have sufficiently apprised Defendants of the illegality of the undertaking. Defendants, therefore have the duty to terminate the Mango Plantation Project. They, however, [chose] to continue it, apparently to further their [own] interest in the scheme for their own personal benefit and gain, an act which is clearly contrary to the fiduciary nature of their relationship with the corporation in which they are officers. Such persistence proves evident bad faith, or a breach of a known duty through some motive or ill-will, which resulted in the further dissipation and wastage of the Rural Bank's assets, unjustly depriving Plaintiffs of their fair share in the assets of the bank.

All the foregoing satisfactorily affirms the allegations of Plaintiffs to the effect that these contracts were but part of a device employed by Defendants to siphon [off] the Rural bank for their personal gain.[20]

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though

---

[20] *Rollo*, pp. 76-77. (Citations omitted).

incapable of precise pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.[21] Article 2220 of the Civil Code further provides that moral damages may be recovered in case of a breach of contract where the defendant acted in bad faith.[22]

To award moral damages, a court must be satisfied with proof of the following requisites: (1) an injury — whether physical, mental, or psychological — clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission of the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219.[23]

Accordingly, based upon the findings of the trial court, it is clear that respondents are entitled to moral damages. The acts attributed to the petitioners as directors of the Rural Bank manifestly prejudiced the respondents causing detriment to their standing as directors and stockholders of the Rural Bank.

Exemplary damages cannot be recovered as a matter of right.[24] While these need not be proved, respondents must show that they are entitled to moral, temperate or compensatory damages before the court may consider the question of awarding exemplary damages.[25] We find that respondents are indeed entitled to moral damages; thus, the award for exemplary damages is in order.

---

[21] Civil Code, Art. 2217.

[22] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[23] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 254, citing *Expertravel & Tours, Inc. v. Court of Appeals*, 368 Phil. 444 (1999).

[24] Civil Code, Art. 2233.

[25] *Construction Development Corporation of the Philippines v. Estrella*, G.R. No. 147791, September 8, 2006, 501 SCRA 228, 243, citing *Del Rosario v. Court of Appeals*, 267 SCRA 158, 173 (1997).

Anent the award for attorney's fees, Article 2208 of the Civil Code states:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded.

Hence, the award of exemplary damages is in itself sufficient justification for the award of attorney's fees.[26]

WHEREFORE, the foregoing premises considered, the petition is hereby *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 54226 are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150488. July 28, 2008]

SIEMENS PHILIPPINES, INC. and MR. ERNST H. BEHRENS, *petitioners, vs.* **ENRICO A. DOMINGO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINITION; RESPONDENT WAS CONSTRUCTIVELY DISMISSED IN CASE AT BAR. — We believe, and so hold, that Domingo

---

[26] *National Power Corporation, et al. v. Court of Appeals and Growth Link, Inc. v. Court of Appeals,* 339 Phil. 605, 631 (1997).

was constructively dismissed from employment. A diminution of pay is prejudicial to the employee and amounts to constructive dismissal. The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay. It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. It is brought about by the clear discrimination, insensibility or disdain shown by an employer which becomes unbearable to the employee. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary. We have, under the law's mandate, consistently resolved this situation in favor of the employee in order to protect his rights and interests from the coercive acts of the employer.

2. ID.; ID.; ID.; ID.; RESPONDENT'S RESIGNATION FROM THE COMPANY WAS IN REALITY NOT HIS CHOICE BUT A SITUATION CREATED BY THE COMPANY. — Domingo's resignation was brought about by the decision of the management of Siemens Philippines not to renew — or work for the renewal of — his consultancy contract with Siemens Germany which clearly resulted in the substantial diminution of his salary. The situation brought about the feeling of oppression which compelled Domingo to resign. The diminution in pay created an adverse working environment that rendered it impossible for Domingo to continue working for Siemens Philippines. His resignation from the company was in reality not his choice but a situation created by the company, thereby amounting to constructive dismissal.

3. ID.; ID.; ID.; ID.; WHILE PETITIONER IS NOT A PARTY TO THE ARRANGEMENT BETWEEN ITS MOTHER COMPANY IN GERMANY, THE LATTER'S SUBSIDIARY COMPANY IN THE PHILIPPINES AND RESPONDENT, KNOWLEDGE AND ACQUIESCENCE TO, IF NOT ACTUAL CONCURRENCE IN, THE ARRANGEMENT CAN BE IMPUTED TO PETITIONER AS TO BIND IT TO

THE AGREEMENT. — The argument of Siemens Philippines that it is not privy to the consultancy agreement between Domingo and Siemens Germany is unacceptable. By virtue of its employment contract with Domingo, Siemens Philippines stepped into the shoes of ETSI as Domingo's employer. The stipulation in the contract that Domingo shall suffer no diminution in salary, benefits and privileges that he enjoyed as employee of ETSI is, in effect, assumption by Siemens Philippines of ETSI's obligations and commitments. This included the guarantee that Domingo's consultancy contract with Siemens Germany would be renewed. After all, there was a commitment by Siemens Germany that the consultancy contract would continue as long as Domingo remained an employee of ETSI; and Domingo's employment with Siemens Philippines was merely a continuation of his employment with ETSI. While admittedly, Siemens Philippines is not a party to the arrangement between Siemens Germany, ETSI and Domingo, knowledge of and acquiescence to — if not actual concurrence in — the arrangement can be imputed to Siemens Philippines as to bind it to the arrangement.

4. ID.; ID.; ID.; ID.; FACTS SHOWING KNOWLEDGE AND ACQUIESCENCE BY PETITIONER. — *First*, based on the findings of facts of the LA, NLRC and CA — MATEC, ETSI, Siemens Philippines and Siemens Germany are related companies, the first three being subsidiaries of the parent company, and the fourth, Siemens Germany, having an investment in Siemens Philippines. Short of piercing the veil of corporate fiction, we note the intimate corporate relationship of Siemens Germany and Siemens Philippines, including the practice of the two companies of integrating their workforce. *Second*, in Domingo's contract of employment with Siemens Philippines, it is provided that Domingo shall not be connected in any other work capacity or employment or be otherwise involved, directly or indirectly, with any other business or concern without first having obtained the written consent of the company. Yet, Siemens Philippines never questioned the continued consultancy work of Domingo with Siemens Germany, not even when the consultancy agreement was renewed twice during the lifetime of Domingo's contract of employment with Siemens Philippines. *Third*, the guarantee letter issued by Siemens Germany in favor of Domingo was never questioned, much less revoked by Siemens Philippines when it assumed

the employment of Domingo. The Guarantee Letter was a security given to Domingo by Siemens Germany assuring Domingo that Siemens Philippines would ensure that Siemens Germany would extend the consultancy agreement as long as Domingo was under its employ. *Fourth*, the consultancy agreement was a form of benefit or privilege given to Domingo by ETSI, a privilege that was allowed by Siemens Philippines to continue when it took over the majority of the business activities of ETSI and, consequently, became Domingo's employer. The outright removal of the privilege contravenes the law, because it resulted in the effective diminution of Domingo's salary.

5. ID.; ID.; ID.; ID.; PETITIONER COMPANY CANNOT BE HELD LIABLE FOR THE MONETARY OBLIGATIONS OF ITS MOTHER COMPANY IN GERMANY SINCE THE TWO COMPANIES ARE SEPARATE AND DISTINCT FROM EACH OTHER; PETITIONER MAY BE HELD LIABLE FOR DAMAGES FOR ITS FAILURE TO WORK FOR THE RENEWAL OF RESPONDENT'S CONTRACT WITH ITS MOTHER COMPANY. — Domingo's work as a consultant for Siemens Germany was a privilege or benefit, if not actually granted, at least acquiesced in by Siemens Philippines. However, this does not mean that the latter corporation also assumes the responsibility of compensating Domingo for his work as a consultant, even if, by stepping into the shoes of ETSI, it effectively sealed the guarantee of Siemens Germany for the renewal of Domingo's consultancy contract. In other words, what Siemens Philippines granted to Domingo was only the privilege to work in another corporation, but it did not undertake to compensate him for such work. Before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced. Thus, before Siemens Philippines can be held answerable for the obligations of Siemens Germany to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other. On this aspect, Domingo has failed to present the proof necessary to pierce the corporate veil between the two companies. Ordinarily, when there is constructive dismissal, which is a form of illegal dismissal, the employer is liable for the full amount of backwages, if reinstatement is no longer possible, and separation

pay. In the case at bar, we cannot hold Siemens Philippines liable for the monetary obligations of Siemens Germany. The circumstances surrounding this case necessitate a different treatment in the award of backwages and separation pay, since the companies involved are separate and distinct from each other. However, by Siemens Philippines' failure to work for the renewal of Domingo's consultancy contract with Siemens Germany, Siemens Philippines may be held answerable in damages to Domingo.

6. ID.; ID.; ID.; ID.; PETITIONER'S CHIEF EXECUTIVE OFFICER CANNOT BE HELD SOLIDARILY LIABLE WITH THE COMPANY SINCE MALICE AND BAD FAITH IN THE CONSTRUCTIVE DISMISSAL OF RESPONDENT WAS NOT SUFFICIENTLY PROVEN. — Domingo's constructive dismissal entitles him to his monetary claims, subject to the following modifications: *First*, we are not in accord with the Decision of the LA finding Behrens, the President and Chief Executive Officer of Siemens Philippines, solidarily liable with the company. A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. In the case at bar, malice or bad faith on the part of Behrens in the constructive dismissal of Domingo was not sufficiently proven to justify a ruling holding him solidarily liable with Siemens Philippines.

7. ID.; ID.; ID.; ID.; RESPONDENT IS ENTITLED TO A SEPARATION PAY OF ONE MONTH PAY FOR EVERY YEAR OF SERVICE; CONSULTANCY FEES IS NOT INCLUDED IN THE COMPUTATION OF SEPARATION PAY. — *Second*, an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively. As a rule, separation pay is awarded to an illegally dismissed employee, computed at the rate of one month pay per year of service. Accordingly, the LA decision granting separation pay equivalent to two months

salary per year of service must be modified. There is nothing on record that even remotely suggests that it is the company policy of Siemens Philippines to grant its employees separation pay of two months' salary for every year of service. Thus, in consonance with our previous rulings, Domingo shall be awarded separation pay in the amount of one month pay for every year of service, but consultancy fees shall not be included in the computation of his separation pay. As discussed above, the evidence presented by Domingo is not sufficient to pierce the veil of corporate fiction between Siemens Philippines and Siemens AG, which would make Siemens Philippines liable for the monetary obligations of Siemens AG.

8. ID.; ID.; ID.; ID.; SINCE REINSTATEMENT OF RESPONDENT IS NO LONGER POSSIBLE DUE TO HIS STRAINED RELATIONS WITH PETITIONER COMPANY, HE IS LAWFULLY ENTITLED TO RECEIVE BACKWAGES. — The backwages that should be awarded to Domingo shall be reckoned from the time his constructive dismissal took effect until the finality of this decision. This is in conformity with Article 279 of the Labor Code which provides that an employee who is unjustly dismissed from work shall be entitled to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Since reinstatement of Domingo is no longer possible due to his strained relations with the management of Siemens Philippines, and considering the position he held in the company, he is lawfully entitled to receive backwages. For the same reason cited above, consultancy fees shall be excluded in the computation of Domingo's backwages.

9. ID.; ID.; ID.; ID.; RESPONDENT IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES; REASON FOR AWARD. — *Finally,* moral damages may be recovered when the dismissal of the employee was tainted by bad faith or fraud; or when it constituted an act oppressive to labor or done in a manner contrary to morals, good customs or public policy. Exemplary damages are recoverable if the dismissal was done in a wanton, oppressive, or malevolent manner. In this case, we have found that there was bad faith in the failure or refusal of Siemens Philippines to work for the renewal of Domingo's consultancy contract with Siemens Germany. But while we affirm Domingo's

entitlement to these damages, they are not intended to enrich the dismissed employee. Consequently, we find the amount of ₱50,000.00 for moral damages and ₱50,000.00 for exemplary damages sufficient to allay the sufferings experienced by Domingo and by way of example or correction for public good, respectively.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Delos Reyes Bonifacio Delos Reyes for respondent.

D E C I S I O N

NACHURA, *J.*:

On appeal *via* petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals dated March 12, 2001 and October 18, 2001, respectively, in CA-G.R. SP No. 58512 entitled *Enrico A. Domingo versus National Labor Relations Commission (First Division) and Siemens Philippines, Inc., and/or Mr. E. H. Behrens.*

This is an offshoot of an illegal dismissal case filed by Enrico A. Domingo (Domingo) against Siemens Philippines, Inc., Manila (Siemens Philippines) in July 1995 wherein Domingo got a favorable decision from the Labor Arbiter (LA). On appeal, however, the National Labor Relations Commission (NLRC) reversed the decision of the LA and dismissed the case. Aggrieved, Domingo filed a petition for review on *certiorari*[3] with the Court of Appeals (CA). Finding merit in his petition, the CA reversed the judgment of the NLRC and reinstated the decision of the LA.

---

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring; *rollo*, pp. 44-55.

[2] *Rollo*, p. 57.

[3] RULES OF COURT, Rule 65.

The Facts

On March 16, 1987, Domingo signed an Employment Contract with Maschinen & Technik, Inc. (MATEC) as a consultant, with a compensation package of Php8,000.00/month salary and an allowance of Php400.00/month. MATEC is a subsidiary of Siemens Philippines.[4] Thereafter, Domingo was given additional work by MATEC, in which he was paid DM1,800.00/month on top of his original salary. The extra work was the result of a contract entered into by MATEC and Siemens Aktiengesellschaft[5] (Siemens Germany), whereby MATEC, at the request of Siemens Germany, hired Domingo to handle the operation of OEN OEV TD.[6] Siemens Germany is a German company which has an investment in Siemens Philippines.[7]

On January 28, 1992, Electronic Telephone System Industries, Inc. (ETSI) availed of Domingo's services as assistant manager. ETSI, like MATEC is a subsidiary of Siemens Philippines.[8] The Contract of Employment[9] of Domingo with ETSI provides that the latter shall have the right to assign the said contract in favor of Siemens Philippines, which is a corporation to be incorporated under the laws of the Philippines.[10]

On March 16, 1992, while still an assistant manager of ETSI, Domingo was hired as a consultant by Siemens Germany in the field of text and data networks for a period of twelve (12) months.[11] As compensation, he received DM20,000.00, payable once for every twelve-month period.[12]

---

[4] *Rollo,* p. 177.

[5] Appears in some parts of the records as Aktiengeselsschaft.

[6] *Rollo,* pp. 92-94.

[7] *Id.* at 44.

[8] *Id.* at 178.

[9] *Id.* at 100-101.

[10] *Id.*

[11] *Id.* at 70.

[12] *Id.* at 72.

On March 31, 1992, Siemens Germany sent a letter to ETSI guaranteeing the consultancy agreement between Siemens Germany and Domingo. The pertinent portion of the letter reads:

Under Item 7.1, the consultancy agreement is valid for 12 months. To give Mr. R. Domingo the necessary security, we guarantee you that we will extend the Consultancy Agreement with Mr. R. Domingo for as long as he has an employment relationship with you.

Please tell him that you (ETSI) will ensure that the [sic] Siemens AG will extend the Consultancy Agreement for as long as an employment relationship exists between ETSI and Mr. R. Domingo.[13]

On June 1, 1992, Domingo signed a Contract of Employment with Siemens Philippines. The relevant portions of the contract read:

WITNESSETH : That

WHEREAS, the COMPANY, is taking over the greater part of the business activities, of ELECTRONIC TELEPHONE SYSTEMS INDUSTRIES, INC. (ETSI),

WHEREAS, the COMPANY has offered to engage the services of the EMPLOYEE as **Assistant Manager** and the EMPLOYEE has agreed to accept such employment under the terms and conditions mutually acceptable to both parties.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

1. The COMPANY hereby engages the services of the EMPLOYEE as **Assistant Manager — Public Communications Systems** and the EMPLOYEE hereby accepts such employment, as a regular employee of the COMPANY in accordance with the terms and conditions of this contract. The term of the EMPLOYEE's employment shall begin on 01 June 1992. The EMPLOYEE shall cease from this date to be an employee of ETSI and the EMPLOYEE's contract of employment with ETSI is thereby deemed terminated and superseded by this Contract.

---

[13] *Id*. at 75.

x x x x x x x x x

3. The EMPLOYEE shall suffer no diminution in salary, benefits and privileges that he enjoyed as a former employee of ETSI. It is hereby agreed that the EMPLOYEE's length of service with ETSI shall be credited and recognized by the COMPANY. For this purpose, the COMPANY acknowledges that the EMPLOYEE's hiring date with ETSI is 01 January 1992.

x x x x x x x x x

6. The COMPANY shall pay the EMPLOYEE a salary of **Twenty-Four Thousand One Hundred Fifty Pesos** (₱24,150.00) per month. The payments will be made [during] the 15th and 30th of each month.

7. During the period of his employment, the EMPLOYEE shall not be connected in any other work capacity or employments, nor be otherwise involved, directly or indirectly, with any other business or concern whatsoever without first having obtained the written consent of the COMPANY. It is the COMPANY's intention that the EMPLOYEE devote[s] all of his efforts towards the fulfillment of his obligations under this contract.[14]

On March 11, 1993, while Domingo was already in the employ of Siemens Philippines, Siemens Germany extended the consultancy agreement with Domingo for another twelve (12) months. Again, on March 16, 1994, Siemens Germany renewed the consultancy agreement with Domingo for another six (6) months.[15] Domingo's consultancy contract expired in September 1994.[16] Complacent that the consultancy agreement would be renewed in accordance with the guarantee letter, Domingo continued to render service as a consultant despite the absence of a formal notice of renewal.[17] He had every reason to feel secure because, in January 1995, without his contract being

---

[14] *Id.* at 67-68.

[15] *Id.* at 180.

[16] *Id.* at 403.

[17] *Id.* at 181, 403.

renewed, he was even made to accompany to Hong Kong the General Manager of Siemens Germany and the Division Manager of Siemens Philippines to seal an agreement between Siemens Philippines and Philippine Long Distance Telephone Company involving a US$1.09M Packet Switching Contract.[18]

Earlier, on October 31, 1994, Siemens Philippines sent a letter[19] to Domingo proposing a new incentive scheme. The letter was signed by Sepp E. Tietze, General Manager, VS Regional Manager Singapore; and by Ernst H. Behrens (Behrens), President and Chief Operating Officer of Siemens Philippines Inc., Manila. The relevant portions of the letter read:

> We refer to your special arrangement with VS Munich (formally OEN VD) which expired September 1994.
>
> It is the VS policy to let all sales-related employees contribute on the success of the group.
>
> Consequently, an incentive scheme will shortly be introduced for all VS Divisions in South East (sic) Asia. As already discussed with you and agreed upon[,] you will receive a new contract incorporating the incentive scheme adapted to the conditions within the Philippines.[20]

The incentive scheme was, in effect, a replacement of his consultancy contract with Siemens Germany. Under the scheme, Domingo would receive a sales compensation package of 20% of his peso salary, or a maximum of about Php70,000.00 per annum, whereas under the consultancy agreement, he was receiving a fixed salary of Php370,000.00 (DM20,000.00) per annum. Feeling humiliated by the diminution of his salary, Domingo was forced to resign. On February 27, 1995, Domingo tendered his Resignation Letter[21] to Siemens Philippines, the pertinent portion of which reads:

---

[18] *Id.* at 181.

[19] *Id.* at 119.

[20] *Id.*

[21] *Id.* at 77.

Under the present circumstances and with the result of our discussions with Mr. Tietze and Mr. Behrens, I am tendering my resignation effective close of office on March 31, 1995. I regret that I have to make this decision but I hope you will understand that I am forced to do it. I wish you good luck in the VS Division and hope to see you again in the future.

On July 6, 1995, Domingo filed a complaint for illegal dismissal and prayed for the payment of salaries, 13th month pay, backwages, damages, separation pay and attorney's fees.[22] Domingo alleged that he was forced to resign because of the act of Siemens Philippines of not renewing the consultancy agreement.[23] Siemens Philippines countered that Domingo's resignation was voluntary and that they were not privy to the consultancy agreement between Domingo and Siemens Germany.[24]

On May 28, 1997, the Labor Arbiter rendered a Decision,[25] disposing, as follows:

WHEREFORE, judgment is hereby rendered finding complainant [Domingo] to have been illegally dismissed and the respondent[s] are ordered, jointly and severally, to pay complainant his backwages and other benefits from April 1, 1995 up to October 5, 1995, consultancy fees of DM20,000.00 from October 1, 1994 to October 5, 1995 but rounded up to one year, or its peso equivalent at the time [of] payment, moral damages of Five Hundred Thousand Pesos (₱500,000.00); exemplary damages of Five Hundred Thousand Pesos ₱500,000.00, separation pay equivalent to two months pay per year of service and attorney's fees of 10% of whatever amount complainant will recover in this case. Complainant's consultancy fee shall be included in the computation of his separation pay using the following formula: DM20,000.00 over 12 multiplied by 2 and the product multiplied by 3.

SO ORDERED.[26]

---

[22] *Id.* at 46.

[23] *Id.* at 200.

[24] *Id.* at 183.

[25] Penned by Labor Arbiter Vladimir P. L. Sampang; *rollo*, pp. 177-192.

[26] *Id.* at 191-192.

On appeal, the NLRC reversed the ruling of the LA in a Decision[27] dated August 25, 1999, and declared that Domingo was not illegally terminated. The *fallo* of the said Decision reads:

> WHEREFORE, the appealed decision is set aside. The complaint below is dismissed for being without merit.
>
> SO ORDERED.

Domingo filed a Motion for Reconsideration, but the same was denied by the NLRC in an Order[28] dated January 26, 2000.

Hard pressed, Domingo filed a petition for *certiorari*[29] before the CA assailing the NLRC for grave abuse of discretion in declaring that Domingo was not forced to resign, and for its erroneous appreciation of the evidence on record that resulted in the reversal of the Decision of the LA.[30]

On March 12, 2001, the CA rendered a Decision[31] declaring that Domingo was constructively dismissed. His resignation was adjudged to be involuntary, the substantial decrease in compensation having made Domingo's employment with Siemens Philippines unbearable. The decretal portion of the Decision reads:

> WHEREFORE, premises considered, the petition is granted. The appealed decisions of the NLRC are hereby REVERSED and SET ASIDE. In lieu thereof, the decision of the Labor Arbiter is hereby reinstated.
>
> SO ORDERED.[32]

---

[27] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Rogelio I. Rayala and Commissioner Alberto R. Quimpo, concurring; *rollo*, pp. 255-269.

[28] *Id.* at 282-283.

[29] RULES OF COURT, Rule 65.

[30] *Rollo*, p. 47.

[31] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring; *rollo*, pp. 44-55.

[32] *Id.* at 54.

A motion for reconsideration was filed by Siemens Philippines and Behrens, but the same was denied in a Resolution[33] dated October 18, 2001.

On December 13, 2001, Siemens Philippines and Behrens filed the present petition for review on *certiorari.* They raise the following arguments:

> Siemens, Inc. was not a party to the consultancy agreement, hence, it could not guarantee its extension/renewal.
>
> The non-extension/renewal of respondent's consultancy agreement with Siemens AG may not be taken as a circumstance leaving respondent with no alternative but to resign.
>
> Since respondent's resignation was purely voluntary, Siemens, Inc. did not commit illegal dismissal. Hence, there is absolutely no basis in holding petitioners liable to respondent for backwages, consultancy fee, separation pay, damages and attorney's fees.[34]

The Issue

The crucial issue in this case is whether there was constructive dismissal that would entitle Domingo to his monetary claims.

The Ruling of the Court

I. *On Illegal Dismissal*

We believe, and so hold, that Domingo was constructively dismissed from employment.

A diminution of pay is prejudicial to the employee and amounts to constructive dismissal.[35] The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or

---

[33] *Id.* at 57.

[34] *Rollo,* pp. 23-24.

[35] *Francisco v. NLRC,* G.R. No. 170087, August 31, 2006, 500 SCRA 690, 702.

unlikely as the offer of employment involves a demotion in rank or diminution in pay.[36] It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. It is brought about by the clear discrimination, insensibility or disdain shown by an employer which becomes unbearable to the employee. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary.[37]

We have, under the law's mandate, consistently resolved this situation in favor of the employee in order to protect his rights and interests from the coercive acts of the employer.

In the instant case, Domingo's resignation was brought about by the decision of the management of Siemens Philippines not to renew — or work for the renewal of — his consultancy contract with Siemens Germany which clearly resulted in the substantial diminution of his salary. The situation brought about the feeling of oppression which compelled Domingo to resign. The diminution in pay created an adverse working environment that rendered it impossible for Domingo to continue working for Siemens Philippines. His resignation from the company was in reality not his choice but a situation created by the company, thereby amounting to constructive dismissal.

The argument of Siemens Philippines that it is not privy to the consultancy agreement between Domingo and Siemens Germany is unacceptable. By virtue of its employment contract with Domingo, Siemens Philippines stepped into the shoes of ETSI as Domingo's employer. The stipulation in the contract that Domingo shall suffer no diminution in salary, benefits and privileges that he enjoyed as employee of ETSI is, in effect, assumption by Siemens Philippines of ETSI's obligations and

---

[36] *New Ever Marketing, Inc. v. Court of Appeals*, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 297.

[37] *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273.

commitments. This included the guarantee that Domingo's consultancy contract with Siemens Germany would be renewed. After all, there was a commitment by Siemens Germany that the consultancy contract would continue as long as Domingo remained an employee of ETSI; and Domingo's employment with Siemens Philippines was merely a continuation of his employment with ETSI.

While admittedly, Siemens Philippines is not a party to the arrangement between Siemens Germany, ETSI and Domingo, knowledge of and acquiescence to – if not actual concurrence in – the arrangement can be imputed to Siemens Philippines as to bind it to the arrangement. This conclusion finds support in the following:

First, based on the findings of facts of the LA, NLRC and CA — MATEC, ETSI, Siemens Philippines and Siemens Germany are related companies, the first three being subsidiaries of the parent company, and the fourth, Siemens Germany, having an investment in Siemens Philippines. Short of piercing the veil of corporate fiction, we note the intimate corporate relationship of Siemens Germany and Siemens Philippines, including the practice of the two companies of integrating their workforce.

Second, in Domingo's contract of employment with Siemens Philippines, it is provided that Domingo shall not be connected in any other work capacity or employment or be otherwise involved, directly or indirectly, with any other business or concern without first having obtained the written consent of the company. Yet, Siemens Philippines never questioned the continued consultancy work of Domingo with Siemens Germany, not even when the consultancy agreement was renewed twice during the lifetime of Domingo's contract of employment with Siemens Philippines.

Third, the guarantee letter issued by Siemens Germany in favor of Domingo was never questioned, much less revoked by Siemens Philippines when it assumed the employment of Domingo. The Guarantee Letter was a security given to Domingo by Siemens Germany assuring Domingo that Siemens Philippines would ensure

that Siemens Germany would extend the consultancy agreement as long as Domingo was under its employ.

Fourth, the consultancy agreement was a form of benefit or privilege given to Domingo by ETSI, a privilege that was allowed by Siemens Philippines to continue when it took over the majority of the business activities of ETSI and, consequently, became Domingo's employer. The outright removal of the privilege contravenes the law, because it resulted in the effective diminution of Domingo's salary.

II. *On Domingo's Monetary Claims*

As stated above, Domingo's work as a consultant for Siemens Germany was a privilege or benefit, if not actually granted, at least acquiesced in by Siemens Philippines. However, this does not mean that the latter corporation also assumes the responsibility of compensating Domingo for his work as a consultant, even if, by stepping into the shoes of ETSI, it effectively sealed the guarantee of Siemens Germany for the renewal of Domingo's consultancy contract. In other words, what Siemens Philippines granted to Domingo was only the privilege to work in another corporation, but it did not undertake to compensate him for such work.

Before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced. Thus, before Siemens Philippines can be held answerable for the obligations of Siemens Germany to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other. On this aspect, Domingo has failed to present the proof necessary to pierce the corporate veil between the two companies.

Ordinarily, when there is constructive dismissal, which is a form of illegal dismissal, the employer is liable for the full amount of backwages, if reinstatement is no longer possible, and separation pay. In the case at bar, we cannot hold Siemens Philippines liable for the monetary obligations of Siemens Germany. The circumstances surrounding this case necessitate a different

treatment in the award of backwages and separation pay, since the companies involved are separate and distinct from each other. However, by Siemens Philippines' failure to work for the renewal of Domingo's consultancy contract with Siemens Germany, Siemens Philippines may be held answerable in damages to Domingo.

Consequently, Domingo's constructive dismissal entitles him to his monetary claims, subject to the following modifications:

First, we are not in accord with the Decision of the LA finding Behrens, the President and Chief Executive Officer of Siemens Philippines, solidarily liable with the company. A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[38] In the case at bar, malice or bad faith on the part of Behrens in the constructive dismissal of Domingo was not sufficiently proven to justify a ruling holding him solidarily liable with Siemens Philippines.

Second, an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.[39]

As a rule, separation pay is awarded to an illegally dismissed employee, computed at the rate of one month pay per year of service. Accordingly, the LA decision granting separation pay equivalent to two months salary per year of service must be modified. There is nothing on record that even remotely suggests

---

[38] *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 844 (1995).

[39] *Aurora Land Projects Corporation v. NLRC*, 344 Phil. 44, 58 (1997); *Torillo v. Leogardo, Jr.*, G.R. No. 77205, May 27, 1991, 197 SCRA 471, 477.

that it is the company policy of Siemens Philippines to grant its employees separation pay of two months' salary for every year of service. Thus, in consonance with our previous rulings,[40] Domingo shall be awarded separation pay in the amount of one month pay for every year of service, but consultancy fees shall not be included in the computation of his separation pay. As discussed above, the evidence presented by Domingo is not sufficient to pierce the veil of corporate fiction between Siemens Philippines and Siemens AG, which would make Siemens Philippines liable for the monetary obligations of Siemens AG.

Third, the backwages that should be awarded to Domingo shall be reckoned from the time his constructive dismissal took effect until the finality of this decision. This is in conformity with Article 279 of the Labor Code which provides that an employee who is unjustly dismissed from work shall be entitled to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Since reinstatement of Domingo is no longer possible due to his strained relations with the management of Siemens Philippines, and considering the position he held in the company, he is lawfully entitled to receive backwages. For the same reason cited above, consultancy fees shall be excluded in the computation of Domingo's backwages.

Finally, moral damages may be recovered when the dismissal of the employee was tainted by bad faith or fraud; or when it constituted an act oppressive to labor or done in a manner contrary to morals, good customs or public policy. Exemplary damages are recoverable if the dismissal was done in a wanton, oppressive,

---

[40] *Rutaquio v. NLRC*, 375 Phil. 405 (1999); *Gaco v. NLRC*, G.R. No. 104690, February 23, 1994, 230 SCRA 261, citing *Pepsi-Cola Bottling Co. v. NLRC*, 210 SCRA 277 (1992); *De Vera v. NLRC*, G.R. No. 93212, November 22, 1990, 191 SCRA 632; *Carandang v. Dulay*, G.R. No. 90492, August 20, 1990, 188 SCRA 792; *Quezon Electric Cooperative v. NLRC*, G.R. Nos. 79718-22, April 12, 1989, 172 SCRA 89.

or malevolent manner.[41] In this case, we have found that there was bad faith in the failure or refusal of Siemens Philippines to work for the renewal of Domingo's consultancy contract with Siemens Germany. But while we affirm Domingo's entitlement to these damages, they are not intended to enrich the dismissed employee. Consequently, we find the amount of ₱50,000.00 for moral damages and ₱50,000.00 for exemplary damages sufficient to allay the sufferings experienced by Domingo and by way of example or correction for public good, respectively.

WHEREFORE, the Decision of the Court of Appeals, dated March 12, 2001, is hereby *AFFIRMED WITH THE MODIFICATION* that petitioner Siemens Philippines, Inc. is hereby ordered to pay respondent Enrico A. Domingo the following:

(1) separation pay equivalent to one month pay per year of service;

(2) full backwages and other benefits from the date of his constructive dismissal up to the finality of this Decision;

(3) moral damages of fifty thousand pesos (₱50,000.00);

(4) exemplary damages of fifty thousand pesos (₱50,000.00); and

(5) attorney's fees.

This case is *REMANDED* to the Labor Arbiter for computation of the separation pay, backwages, and other monetary awards due respondent.

SO ORDERED.

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

---

[41] *Norkis Trading Co., Inc. v. NLRC*, G.R. No. 168159, August 19, 2005, 467 SCRA 461, 473; *Garcia v. NLRC*, G.R. No. 110518, August 1, 1994, 234 SCRA 632, 638.

THIRD DIVISION

[G.R. No. 154450. July 28, 2008]

JOSEPH L. SY, NELSON GOLPEO and JOHN TAN, *petitioners, vs.* **NICOLAS CAPISTRANO, JR., substituted by JOSEFA B. CAPISTRANO, REMEDIOS TERESITA B. CAPISTRANO and MARIO GREGORIO B. CAPISTRANO; NENITA F. SCOTT; SPS. JUANITO JAMILAR and JOSEFINA JAMILAR; SPS. MARIANO GILTURA and ADELA GILTURA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE AND CANNOT BE REVIEWED ON APPEAL, AS LONG AS THEY ARE BASED ON SUBSTANTIAL EVIDENCE; EXCEPTIONS TO THE RULE; NOT APPLICABLE IN CASE AT BAR. — The arguments proffered by petitioners all pertain to factual issues which have already been passed upon by both the trial court and the CA. Findings of facts of the CA are final and conclusive and cannot be reviewed on appeal, as long as they are based on substantial evidence. While, admittedly, there are exceptions to this rule such as: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case and the same were contrary to the admissions of both the appellant and appellee. Not one of these exceptional circumstances is present in this case.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; PURPORTED SALE OF THE SUBJECT PROPERTY IS A FORGERY. — The CA was correct in upholding the finding of the trial court that the purported sale of the property from Capistrano to Scott was a forgery, and resort to a handwriting expert was not even necessary as the specimen signature submitted by Capistrano during trial showed marked variance from that found in the

deed of absolute sale. The technical procedure utilized by handwriting experts, while usually helpful in the examination of forged documents, is not mandatory or indispensable to the examination or comparison of handwritings. By the same token, we agree with the CA when it held that the deed of sale between Scott and the Jamilars was also forged, as it noted the stark differences between the signatures of Scott in the deed of sale and those in her handwritten letters to Capistrano.

3. ID.; ID.; ID.; FACTS NEGATING THE PARTIES' CLAIM OF BEING INNOCENT PURCHASERS FOR VALUE. — In finding that the Jamilar spouses were not innocent purchasers for value of the subject property, the CA properly held that they should have known that the signatures of Scott and Capistrano were forgeries due to the patent variance of the signatures in the two deeds of sale shown to them by Scott, when Scott presented to them the deeds of sale, one allegedly executed by Capistrano in her favor covering his property; and the other allegedly executed by Scott in favor of Capistrano over her property, the ₱40,000.00 consideration for which ostensibly constituted her initial and partial payment for the sale of Capistrano's property to her. The CA also correctly found the Gilturas not innocent purchasers for value, because they failed to check the veracity of the allegation of Jamilar that he acquired the property from Capistrano. In ruling that Sy was not an innocent purchaser for value, we share the observation of the appellate court that Sy knew that the title to the property was still in the name of Capistrano, but failed to verify the claim of the Jamilar spouses regarding the transfer of ownership of the property by asking for the copies of the deeds of absolute sale between Capistrano and Scott, and between Scott and Jamilar. Sy should have likewise inquired why the Gilturas had to affix their conformity to the contract to sell by asking for a copy of the deed of sale between the Jamilars and the Gilturas. Had Sy done so, he would have learned that the Jamilars claimed that they purchased the property from Capistrano and not from Scott. We also note, as found by both the trial court and the CA, Tan's testimony that he, Golpeo and Sy are brothers, he and Golpeo having been adopted by Sy's father. Tan also testified that he and Golpeo were privy to the transaction between Sy and the Jamilars and the Gilturas, as shown by their collective act of filing a complaint for specific performance to enforce the contract to sell. Also noteworthy

— and something that would have ordinarily aroused suspicion — is the fact that even before the supposed execution of the deed of sale by Scott in favor of the Jamilars, the latter had already caused the subdivision of the property into nine (9) lots, with the title to the property still in the name of Capistrano. Notable likewise is that the owner's duplicate copy of TCT No. 76496 in the name of Capistrano had always been in his possession since he gave Scott only a photocopy thereof pursuant to the latter's authority to look for a buyer of the property. On the other hand, the Jamilars were able to acquire a new owner's duplicate copy thereof by filing an affidavit of loss and a petition for the issuance of another owner's duplicate copy of TCT No. 76496. The minimum requirement of a good faith buyer is that the vendee of the real property should at least see the owner's duplicate copy of the title. A person who deals with registered land through someone who is not the registered owner is expected to look beyond the certificate of title and examine all the factual circumstances thereof in order to determine if the vendor has the capacity to transfer any interest in the land. He has the duty to ascertain the identity of the person with whom he is dealing and the latter's legal authority to convey. Finally, there is the questionable cancellation of the certificate of title of Capistrano which resulted in the immediate issuance of a certificate of title in favor of the Jamilar spouses despite the claim that Capistrano sold his property to Scott and it was Scott who sold the same to the Jamilars.

APPEARANCES OF COUNSEL

Robert S. Cruz for petitioners.
Joannes Caacbay and *Oscar I. Mercado* for Sps. Jamilar.
Benitez Parlade Africa Herrera Parlade & Panga Law Offices for the Capistranos.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court of the Decision of the Court of Appeals (CA) dated July 23, 2002 in CA-G.R. CV No. 53314.

The case originated from an action for reconveyance of a large tract of land in Caloocan City before the Regional Trial Court (RTC), Branch 129, Caloocan City, entitled *Nicolas Capistrano, Jr. v. Nenita F. Scott, Spouses Juanito and Josefina Jamilar, Joseph L. Sy, Nelson Golpeo and John Tan, and the Register of Deeds, Caloocan City.* Said case was docketed as Civil Case No. C-15791.

The antecedents are as follows:

Sometime in 1980, Nenita Scott (Scott) approached respondent Nicolas Capistrano, Jr. (Capistrano) and offered her services to help him sell his 13,785 square meters of land covered by Transfer Certificate of Title (TCT) No. 76496 of the Register of Deeds of Caloocan City. Capistrano gave her a temporary authority to sell which expired without any sale transaction being made. To his shock, he discovered later that TCT No. 76496, which was in his name, had already been cancelled on June 24, 1992 and a new one, TCT No. 249959, issued over the same property on the same date to Josefina A. Jamilar. TCT No. 249959 likewise had already been cancelled and replaced by three (3) TCTs (Nos. 251524, 251525, and 251526), all in the names of the Jamilar spouses. TCT Nos. 251524 and 251526 had also been cancelled and replaced by TCT Nos. 262286 and 262287 issued to Nelson Golpeo and John B. Tan, respectively.

Upon further inquiries, Capistrano also discovered the following:

1. The cancellation of his TCT No. 76496 and the issuance of TCT No. 249959 to Jamilar were based upon two (2) deeds of sale, *i.e.*, a "Deed of Absolute Sale" purportedly executed by him in favor of Scott on March 9, 1980 and a "Deed of Absolute Sale" allegedly executed by Scott in favor of Jamilar on May 17, 1990.
2. The supposed 1980 sale from him to Scott was for ₱150,000.00; but despite the lapse of more than 10 years thereafter, the alleged 1990 sale from Scott to Jamilar was also for ₱150,000.00.
3. Both deeds were presented for registration simultaneously on June 24, 1992.

4. Although the deed in favor of Scott states that it was executed on March 9, 1980, the annotation thereof at the back of TCT No. 76496 states that the date of the instrument is March 9, 1990.

5. Even if there was no direct sale from Capistrano to Jamilar, the transfer of title was made directly to the latter. No TCT was issued in favor of Scott.

6. The issuance of TCT No. 249959 in favor of Jamilar was with the help of Joseph Sy, who provided for (sic) money for the payment of the capital gains tax, documentary stamps, transfer fees and other expenses of registration of the deeds of sale.

7. On July 8, 1992, an Affidavit of Adverse Claim was annotated at the back of Jamilar's TCT No. 249959 at the instance of Sy, Golpeo, and Tan under a Contract to Sell in their favor by the Jamilar spouses. Said contract was executed sometime in May, 1992 when the title to the property was still in the name of Capistrano.

8. Around July 28, 1992, upon request of the Jamilar spouses, TCT No. 249959 was cancelled and three (3) new certificates of title (TCT Nos. 251524, 251525, and 251526) all in the name of Jamilar on the basis of an alleged subdivision plan (No. Psd-13-011917) without Capistrano's knowledge and consent as registered owner. The notice of adverse claim of Sy, Golpeo, and Tan was carried over to the three new titles.

9. Around August 18, 1992, Sy, Golpeo, and Tan filed Civil Case No. C-15551 against the Jamilars and another couple, the Giltura spouses, for alleged violations of the Contract to Sell. They caused a notice of *lis pendens* to be annotated on the three (3) TCTs in Jamilar's name. Said civil case, however, was not prosecuted.

10. On January 26, 1993, a Deed of Absolute Sale was executed by the Jamilars and the Gilturas, in favor of Golpeo and Tan. Thus, TCT Nos. 251524 and 251526 were cancelled and TCT Nos. 262286 and 262287 were issued to Golpeo and Tan, respectively. TCT No. 251525 remained in the name of Jamilar.[1]

---

[1] RTC Decision, pp. 1-3; *rollo*, pp. 53-55.

Thus, the action for reconveyance filed by Capistrano, alleging that his and his wife's signatures on the purported deed of absolute sale in favor of Scott were forgeries; that the owner's duplicate copy of TCT No. 76496 in his name had always been in his possession; and that Scott, the Jamilar spouses, Golpeo, and Tan were not innocent purchasers for value because they all participated in defrauding him of his property. Capistrano claimed ₱1,000,000.00 from all defendants as moral damages, ₱100,000.00 as exemplary damages; and ₱100,000.00 as attorney's fees.

In their Answer with Counterclaim, the Jamilar spouses denied the allegations in the complaint and claimed that Capistrano had no cause of action against them, as there was no privity of transaction between them; the issuance of TCT No. 249959 in their names was proper, valid, and legal; and that Capistrano was in estoppel. By way of counterclaim, they sought ₱50,000.00 as actual damages, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.

In their Answer, Sy, Golpeo, and Tan denied the allegations in the complaint and alleged that Capistrano had no cause of action against them; that at the time they bought the property from the Jamilars and the Gilturas as unregistered owners, there was nothing in the certificates of title that would indicate any vice in its ownership; that a buyer in good faith of a registered realty need not look beyond the Torrens title to search for any defect; and that they were innocent purchasers of the land for value. As counterclaim, they sought ₱500,000.00 as moral damages and ₱50,000.00 as attorney's fees.

In her Answer with Cross-claim, Scott denied the allegations in the complaint and alleged that she had no knowledge or any actual participation in the execution of the deeds of sale in her favor and the Jamilars'; that she only knew of the purported conveyances when she received a copy of the complaint; that her signatures appearing in both deeds of sale were forgeries; that when her authority to sell the land expired, she had no other dealings with it; that she never received any amount of money as alleged consideration for the property; and that, even

if she were the owner, she would never have sold it at so low a price.

By way of Cross-claim against Sy, Golpeo, Tan, and the Jamilars, Scott alleged that when she was looking for a buyer of the property, the Jamilars helped her locate the property, and they became conversant with the details of the ownership and other particulars thereof; that only the other defendants were responsible for the seeming criminal conspiracy in defrauding Capistrano; that in the event she would be held liable to him, her other co-defendants should be ordered to reimburse her of whatever amount she may be made to pay Capistrano; that she was entitled to ₱50,000.00 as moral damages and ₱50,000.00 as attorney's fees from her co-defendants due to their fraudulent conduct.

Later, Sy, Golpeo, and Tan filed a third-party complaint against the Giltura spouses who were the Jamilars' alleged co-vendors of the subject property.

Thereafter, trial on the merits ensued.

Subsequently, the trial court decided in favor of Capistrano. In its Decision dated May 7, 1996, adopting the theory of Capistrano as presented in his memorandum, the trial court rendered judgment as follows:

1. Declaring plaintiff herein as the absolute owner of the parcel of land located at the Tala Estate, Bagumbong, Caloocan City and covered by TCT No. 76496;

2. Ordering defendant Register of Deeds to cause the cancellation of TCT No. 251525 registered in the name of defendant Josefina Jamilar;

3. Ordering defendant Register of Deeds to cause the cancellation of TCT Nos. 262286 and 262287 registered in the names of defendants Nelson Golpeo and John B. Tan;

4. Ordering defendant Register of Deeds to cause the issuance to plaintiff of three (3) new TCTs, in replacement of the aforesaid TCTs Nos. 251525, 262286 and 262287;

5. Ordering all the private defendants in the above-captioned case to pay plaintiff, jointly and severally, the reduced amount of ₱400,000.00 as moral damages;

6. Ordering all the private defendants in the above-captioned case to pay to plaintiff, jointly and severally, the reduced sum of ₱50,000.00 as exemplary damages;

7. Ordering all the private defendants in the above-captioned case to pay plaintiff's counsel, jointly and severally, the reduced amount of ₱70,000.00 as attorney's fees, plus costs of suit;

8. Ordering the dismissal of defendants Sy, Golpeo and Tan's Cross-Claim against defendant spouses Jamilar;

9. Ordering the dismissal of defendants Sy, Golpeo and Tan's Third-Party Complaint against defendant spouses Giltura; and

10. Ordering the dismissal of the Counterclaims against plaintiff.

SO ORDERED.[2]

On appeal, the CA, in its Decision dated July 23, 2002, affirmed the Decision of the trial court with the modification that the Jamilar spouses were ordered to return to Sy, Golpeo, and Tan the amount of ₱1,679,260.00 representing their full payment for the property, with legal interest thereon from the date of the filing of the complaint until full payment.

Hence, this petition, with petitioners insisting that they were innocent purchasers for value of the parcels of land covered by TCT Nos. 262286 and 262287. They claim that when they negotiated with the Jamilars for the purchase of the property, although the title thereto was still in the name of Capistrano, the documents shown to them — the court order directing the issuance of a new owner's duplicate copy of TCT No. 76496, the new owner's duplicate copy thereof, the tax declaration, the deed of absolute sale between Capistrano and Scott, the deed of absolute sale between Scott and Jamilar, and the real

[2] *Id*. at 9; *rollo,* p. 61.

estate tax receipts — there was nothing that aroused their suspicion so as to compel them to look beyond the Torrens title. They asseverated that there was nothing wrong in financing the cancellation of Capistrano's title and the issuance of titles to the Jamilars because the money they spent therefor was considered part of the purchase price they paid for their property.

In their Comment, the heirs of Capistrano, who were substituted after the latter's death, reiterated the factual circumstances which should have alerted the petitioners to conduct further investigation, thus —

(a) Why the "Deed of Absolute Sale" supposedly executed by Capistrano had remained unregistered for so long, *i.e.*, from March 9, 1980 up to June 1992, when they were negotiating with the Jamilars and the Gilturas for their purchase of the subject property;

(b) Whether or not the owner's copy of Capistrano's certificate of title had really been lost;

(c) Whether Capistrano really sold his property to Scott and whether Scott actually sold it to the Jamilars, which matters were easily ascertainable as both Capistrano and Scott were still alive and their names appear on so many documents;

(d) Why the consideration for both the March 9, 1980 sale and the May 17, 1990 sale was the same (₱150,000.00), despite the lapse of more than 10 years;

(e) Why the price was so low (₱10.88 per square meter, both in 1980 and in 1990) when the petitioners were willing to pay and actually paid ₱150.00 per square meter in May 1992; and

(f) Whether or not both deeds of sale were authentic.[3]

In addition, the heirs of Capistrano pointed out that petitioners entered into negotiations over the property, not with the registered owner thereof, but only with those claiming ownership thereof based on questionable deeds of sale.

---

[3] *Rollo*, p. 290.

The petition should be denied. The arguments proffered by petitioners all pertain to factual issues which have already been passed upon by both the trial court and the CA.

Findings of facts of the CA are final and conclusive and cannot be reviewed on appeal, as long as they are based on substantial evidence. While, admittedly, there are exceptions to this rule such as: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case and the same were contrary to the admissions of both the appellant and appellee.[4] Not one of these exceptional circumstances is present in this case.

First. The CA was correct in upholding the finding of the trial court that the purported sale of the property from Capistrano to Scott was a forgery, and resort to a handwriting expert was not even necessary as the specimen signature submitted by Capistrano during trial showed marked variance from that found in the deed of absolute sale. The technical procedure utilized by handwriting experts, while usually helpful in the examination of forged documents, is not mandatory or indispensable to the examination or comparison of handwritings.[5]

By the same token, we agree with the CA when it held that the deed of sale between Scott and the Jamilars was also forged, as it noted the stark differences between the signatures of Scott in the deed of sale and those in her handwritten letters to Capistrano.

Second. In finding that the Jamilar spouses were not innocent purchasers for value of the subject property, the CA properly held that they should have known that the signatures of Scott

---

[4] *Japan Airlines v. Simangan,* G.R. No. 170141, April 22, 2008.

[5] *Tapuroc v. Loquellano Vda. de Mende*, G.R. No. 152007, January 22, 2007, 512 SCRA 97, 108.

and Capistrano were forgeries due to the patent variance of the signatures in the two deeds of sale shown to them by Scott, when Scott presented to them the deeds of sale, one allegedly executed by Capistrano in her favor covering his property; and the other allegedly executed by Scott in favor of Capistrano over her property, the ₱40,000.00 consideration for which ostensibly constituted her initial and partial payment for the sale of Capistrano's property to her.

The CA also correctly found the Gilturas not innocent purchasers for value, because they failed to check the veracity of the allegation of Jamilar that he acquired the property from Capistrano.

In ruling that Sy was not an innocent purchaser for value, we share the observation of the appellate court that Sy knew that the title to the property was still in the name of Capistrano, but failed to verify the claim of the Jamilar spouses regarding the transfer of ownership of the property by asking for the copies of the deeds of absolute sale between Capistrano and Scott, and between Scott and Jamilar. Sy should have likewise inquired why the Gilturas had to affix their conformity to the contract to sell by asking for a copy of the deed of sale between the Jamilars and the Gilturas. Had Sy done so, he would have learned that the Jamilars claimed that they purchased the property from Capistrano and not from Scott.

We also note, as found by both the trial court and the CA, Tan's testimony that he, Golpeo and Sy are brothers, he and Golpeo having been adopted by Sy's father. Tan also testified that he and Golpeo were privy to the transaction between Sy and the Jamilars and the Gilturas, as shown by their collective act of filing a complaint for specific performance to enforce the contract to sell.

Also noteworthy — and something that would have ordinarily aroused suspicion — is the fact that even before the supposed execution of the deed of sale by Scott in favor of the Jamilars, the latter had already caused the subdivision of the property into nine (9) lots, with the title to the property still in the name of Capistrano.

Notable likewise is that the owner's duplicate copy of TCT No. 76496 in the name of Capistrano had always been in his possession since he gave Scott only a photocopy thereof pursuant to the latter's authority to look for a buyer of the property. On the other hand, the Jamilars were able to acquire a new owner's duplicate copy thereof by filing an affidavit of loss and a petition for the issuance of another owner's duplicate copy of TCT No. 76496. The minimum requirement of a good faith buyer is that the vendee of the real property should at least see the owner's duplicate copy of the title.[6] A person who deals with registered land through someone who is not the registered owner is expected to look beyond the certificate of title and examine all the factual circumstances thereof in order to determine if the vendor has the capacity to transfer any interest in the land. He has the duty to ascertain the identity of the person with whom he is dealing and the latter's legal authority to convey.[7]

Finally, there is the questionable cancellation of the certificate of title of Capistrano which resulted in the immediate issuance of a certificate of title in favor of the Jamilar spouses despite the claim that Capistrano sold his property to Scott and it was Scott who sold the same to the Jamilars.

In light of the foregoing disquisitions, based on the evidence on record, we find no error in the findings of the CA as to warrant a discretionary judicial review by this Court.

WHEREFORE, the petition is *DENIED DUE COURSE* for failure to establish reversible error on the part of the Court of Appeals. Costs against petitioners.

SO ORDERED.

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

---

[6] *Islamic Directorate of the Philippines v. Court of Appeals,* 338 Phil. 970, 987 (1997).

[7] *Chua v. Soriano,* G.R. No. 150066, April 13, 2007, 521 SCRA 68, 79.

THIRD DIVISION

[G.R. No. 156644. July 28, 2008]

UNIVERSAL ROBINA SUGAR MILLING CORPORATION (URSUMCO) and/or RENATO CABATI, as Manager, *petitioners, vs.* **AGRIPINO CABALLEDA and ALEJANDRO CADALIN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REPUBLIC ACT NO. 7641 (RETIREMENT PAY LAW); ESSENTIAL REQUISITES BEFORE THE LAW BE GIVEN RETROACTIVE EFFECT; ADEQUATELY SATISFIED IN CASE AT BAR. — The issue of the retroactive effect of R.A. 7641 on prior existing employment contracts has long been settled. In *Enriquez Security Services, Inc. v. Cabotaje,* we held: R.A. 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. **There should be little doubt about the fact that the law can apply to labor contracts still existing at the time the statute has taken effect, and that its benefits can be reckoned not only from the date of the law's enactment but retroactively to the time said employment contracts have started**. This doctrine has been repeatedly upheld and clarified in several cases. Pursuant thereto, this Court imposed two (2) essential requisites in order that R.A. 7641 may be given retroactive effect: (1) the claimant for retirement benefits was still in the employ of the employer at the time the statute took effect; and (2) the claimant had complied with the requirements for eligibility for such retirement benefits under the statute. It is evident from the records that when respondents were compulsorily retired from the service, R.A. 7641 was already in full force and effect. The petitioners failed to prove that the respondents did not comply with the requirements for eligibility under the law for such retirement benefits. In sum,

the aforementioned requisites were adequately satisfied, thus, warranting the retroactive application of R.A. 7641 in this case.

2. ID.; ID.; ID.; ID.; AGE OF RETIREMENT IS PRIMARILY DETERMINED BY EXISTING AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE AND IN THE ABSENCE OF SUCH AGREEMENT, THE AGE OF RETIREMENT SHALL BE FIXED BY LAW. — Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under Art. 287 of the Labor Code as amended, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years. In this case, it may be stressed that the CBA does not *per se* specifically provide for the compulsory retirement age nor does it provide for an optional retirement plan. It merely provides that the retirement benefits accorded to an employee shall be in accordance with law. Thus, we must apply Art. 287 of the Labor Code which provides for two types of retirement: (a) compulsory and (b) optional. The first takes place at age 65, while the second is primarily determined by the collective bargaining agreement or other employment contract or employer's retirement plan. In the absence of any provision on optional retirement in a collective bargaining agreement, other employment contract, or employer's retirement plan, an employee may optionally retire upon reaching the age of 60 years or more, but not beyond 65 years, provided he has served at least five years in the establishment concerned. That prerogative is exclusively lodged in the employee.

3. ID.; ID.; ID.; ID.; QUITCLAIMS AND RELEASES BY EMPLOYEES ARE GENERALLY DISFAVORED BY LAW; REQUISITES IN EXCEPTIONAL CASES WHERE THE COURT ACCEPTS VALIDITY OF QUITCLAIMS, NOT ESTABLISHED IN CASE AT BAR. — Generally, the law looks with disfavor on quitclaims and releases by employees who have been inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal

responsibilities and frustrate just claims of employees. They are frowned upon as contrary to public policy. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. The reason is laid down in *Lopez Sugar Corporation v. Federation of Free Workers*: The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of the job, he had to face harsh necessities of life. He thus found himself in no position to resist money proferred. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur*. In exceptional cases, the Court has accepted the validity of quitclaims executed by employees if the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law. In this case, petitioners failed to establish all the foregoing requisites. To be precise, only Alejandro was able to claim a partial amount of his retirement benefit. Thus, it is clear from the decisions of the LA, NLRC and CA that petitioners are still liable to pay Alejandro the differential on his retirement benefits. On the other hand, Agripino was actually and totally deprived of his retirement benefit.

4. ID.; ID.; ID.; ID.; FACT THAT RESPONDENTS FILED A COMPLAINT FOR ILLEGAL DISMISSAL AND PURSUED THE CASE ALL THE WAY TO THE HIGHEST COURT IS A MANIFESTATION THAT THEY HAD NO INTENTION OF RELINQUISHING THEIR EMPLOYMENT AND WHOLLY INCOMPATIBLE TO PETITIONER'S ASSERTION OF VOLUNTARY RETIREMENT. — The petitioners, not the respondents, have the burden of proving that the quitclaim was voluntarily entered into. In previous cases, we have considered, among others, the educational attainment of the employees concerned in upholding the validity of the quitclaims which they have executed in favor of their employers.

It is worth mentioning that the respondents are rank-and-file employees. They are simple folks who rely on their work for the daily sustenance of their respective families. Absent any convincing proof of voluntariness in the submission of the documentary requirements and in the execution of the quitclaim, we cannot simply assume that respondents were not subjected to the very same pressure mentioned in *Becton*. Furthermore, the fact that respondents filed a complaint for illegal dismissal against petitioners completely negates their claim that respondents voluntarily retired. To note, respondents vigorously pursued this case against petitioners, all the way up to this Court. Without doubt, this is a manifestation that respondents had no intention of relinquishing their employment, wholly incompatible to petitioners' assertion that respondents voluntarily retired. We find no reversible error and, thus, sustain the ruling of the CA that respondents did not voluntarily retire but were rather forced to retire, tantamount to illegal dismissal.

APPEARANCES OF COUNSEL

Bolos Reyes-Beltran Miranda Araneta & Del Rosario for petitioners.

Yap-Siton Law Office 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 11, 2002 which modified the Decision[3] of the National Labor Relations Commission (NLRC) dated January 27, 2000.

---

[1] Dated February 24, 2003, *rollo*, pp. 10-35.

[2] Particularly docketed as CA-G.R. SP No. 59552; penned by Associate Justice B.A. Adefuin-De La Cruz (retired), with Associate Justices Wenceslao I. Agnir, Jr. (retired) and Edgardo F. Sundiam, concurring; *id*. at 50-61.

[3] Particularly docketed as NLRC Case No. V-000080-99; CA *rollo*, pp. 51-60.

The Facts

Petitioner Universal Robina Sugar Milling Corporation (URSUMCO) is a domestic corporation engaged in the sugar milling business and petitioner Renato Cabati [4] is URSUMCO's manager.

Respondent Agripino Caballeda (Agripino) worked as welder for URSUMCO from March 1989 until June 23, 1997 with a salary of ₱124.00 per day, while respondent Alejandro Cadalin (Alejandro) worked for URSUMCO as crane operator from 1976 up to June 15, 1997 with a salary of ₱209.30 per day.

On April 24, 1991, John Gokongwei, Jr., President of URSUMCO, issued a Memorandum[5] establishing the company policy on "Compulsory Retirement" (Memorandum) of its employees. The memorandum provides:

> All employees corporate-wide who attain 60 years of age on or before April 30, 1991 shall be considered retired on May 31, 1991.
>
> Henceforth, any employee shall be considered retired 30 days after he attains age 60.
>
> Personnel department shall prepare the retirement notices to be co-signed and served by respective Department managers to employees concerned. The notices must be served as least 30 days before the designated retirement date. Reports of retiring/retired employees shall be submitted by the Personnel Department every end of the month to the President, copy furnished the Senior Vice-Presidents.
>
> Employees who are retiring on May 11, 1991 shall continue reporting to work up to the middle of May. Thereafter, they may make use of their remaining vacation leave credits. Similarly, employees considered retired 30 days after attainment of age 60 shall continue reporting for work during the first hall of the 30-day period, then make use of available VL credits.
>
> Vacation and sick leave credits remaining unused by the employee's designated retirement date shall be converted into cash (VL at 100%, SL at 50% or per CBA) and be included with the Final

---

[4] Also referred to as Rene Cabate in other pleadings and documents.

[5] CA *rollo*, p. 20.

Accountability/Retirement Benefits. Accountability clearance shall be per SOP.

Engaging the services of any retiree after his retirement must first be cleared with the President or the Senior Vice-President concerned especially the terms and condition of such engagement. Retirees can be re-engaged only under a Retainer or Consultancy arrangement and only for a limited period of time.

Subsequently, on December 9, 1992, Republic Act (RA) No. 7641[6] was enacted into law, and it took effect on January 7, 1993,[7] amending Article 287 of the Labor Code, to read:

Art. 287. Retirement. — Any employee may be retired upon reaching the retirement 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 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.

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 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

---

[6] Entitled: 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 EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT.

[7] *Pantranco North Express, Inc. v. National Labor Relations Commission*, 328 Phil. 470, 484 (1996).

(1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

x x x x x x x x x

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

On April 29, 1993, URSUMCO and the National Federation of Labor (NFL), a legitimate labor organization and the recognized sole and exclusive bargaining representative of all the monthly and daily paid employees of URSUMCO, of which Alejandro was a member, entered into a Collective Bargaining Agreement (CBA).[8] Article XV of the said CBA particularly provided that the retirement benefits of the members of the collective bargaining unit shall be in accordance with law.[9]

Agripino and Alejandro (respondents), having reached the age of 60, were allegedly forced to retire by URSUMCO. Agripino averred that URSUMCO illegally dismissed him from employment on June 24, 1997 when he was forced to retire upon reaching the age of sixty (60) years old. Upon the termination of his employment, he accepted his separation pay and applied for retirement benefits with the Social Security System (SSS). Earlier, on April 15, 1997, Alejandro turned 60 years old. On May 28, 1997, he filed his application for retirement with URSUMCO, attaching his birth and baptismal certificates. On July 23, 1997, he accepted his retirement benefits and executed a quitclaim in favor of URSUMCO.

Thereafter, on August 6, 1997, Agripino filed a Complaint[10] for illegal dismissal, damages and attorney's fees before the Labor Arbiter (LA) of Dumaguete City. He alleged that his

---

[8] *Rollo,* pp. 86-100.

[9] *Id.* at 94.

[10] CA *rollo,* p. 22.

compulsory retirement was in violation of the provisions of Republic Act (R.A.) 7641 and, was in effect, a form of illegal dismissal.

On August 26, 1997, Alejandro likewise filed a Complaint[11] for illegal dismissal, underpayment of retirement benefits, damages and attorney's fees before the LA, alleging that he was given only 15 days per year of service by way of retirement benefits and further assails that his compulsory retirement was discriminatory considering that there were other workers over sixty (60) years of age who were allowed to continuously report for work.

The LA's Ruling

On September 30, 1998, the LA rendered a Decision,[12] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the respondent guilty of illegal dismissal and thus ordered to pay complainants: Agripino Caballeda and Alejandro Cadalin their respective backwages from: June 23, 1997 and from June 15, 1997 up to the promulgation of this Decision. Also, the respondent is hereby ordered to reinstate the complainants to their former or equivalent positions without loss of seniority rights and privileges appurtenant thereto.
>
> The computation of complainants' awards is shown below and forms as integral part of this Decision.
>
> 1. AGRIPINO CABALLEDA
> June 23, 1997 – Sept. 30, 1998
> = 1 year and 3 months
> = 15 months
> = ₱124.00 x 26 days x 15 months . . . . . ₱48,360.00
>
> 2. ALEJANDRO CADALIN
> June 15, 1997 – Sept. 30, 1998
> = 1 year and 3 months

---

[11] *Id.* at 21.

[12] *Id.* at 30-36.

= 15 months
= ₱209.00 x 26 x 15 months . . . . . ₱81,627.00
TOTAL . . . . . ₱129,987.00

A ten percent (10%) attorney's fees is also adjudicated from the aggregate award.

All other claims are Dismissed for lack of merit.

SO ORDERED.

The NLRC's Ruling

Petitioners appealed to the NLRC. On January 27, 2000, the NLRC held that Alejandro voluntarily retired because he freely submitted his application for retirement together with his birth and baptismal certificates. Moreover, he had his clearance processed and he received the amount of ₱33,476.77 as retirement benefit. Nevertheless, the NLRC found that since Alejandro's retirement benefit was based merely on fifteen (15) days salary for every year of service, such benefit should be recomputed to conform to the provisions of Art. 287 of the Labor Code as amended. With respect to Agripino, the NLRC held that URSUMCO's claim that Agripino was a mere casual employee was obviously designed to avoid paying Agripino his retirement benefit. Thus, the NLRC ruled:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby **SET ASIDE and VACATED** and a new one entered **DISMISSING** the complaint for illegal dismissal. Respondents are hereby ordered to pay complainants their retirement benefits computed as follows:

1. Alejandro Cadalin:

Jan. 13/88 to June 15/97 = 9 years, 5 months & 3 days

a)	₱209.58/day x 15 days	=	₱3,143.70
b)	1/12 of 13th Month Pay	=	523.95
c)	5 days SILP		1,047.90
			₱4,715.55

₱4,715.55/year of service x 9 years = ₱42,439.95
Less:Retirement proceeds received (p. 107, records) 28,293.30
Retirement differential of Alejandro Cadalin = ₱ 14,146.65

2. Agripino Caballeda:

March 1989 to June 23/97 = 8 years, 3 months & 3 days

a) 124.00/day x 15 days =	1,860.00
b) 1/12 of 13th Month Pay =	310.00
c) 5 days SILP =	620.00
	₱2,790.00

₱2,790.00/year of service x 8 years =
Retirement benefits of Agripino Caballeda ₱ 22,320.00

SO ORDERED.[13]

Respondents filed their Motion for Reconsideration[14] which the NLRC denied in its Resolution[15] dated May 22, 2000, on the ground that it was the respondents who voluntarily applied for retirement upon reaching the age of 60 pursuant to the CBA and established company policy.

Aggrieved, respondents went to the CA via a Petition for *Certiorari*.[16]

The CA's Ruling

The CA declared that URSUMCO illegally dismissed the respondents since the Memorandum unilaterally imposed upon the respondents compulsory retirement at the age of 60. The CA found that there is no existing CBA or employment contract between the parties that provides for early compulsory retirement. Hence, the CA held:

> It is beyond doubt that [petitioner] violated the rights of the [respondents] [insofar] as the latter were not given the prerogative to choose for themselves to retire early or wait for the compulsory retirement age which is sixty[-five] (65) years. "If the intention to retire is not clearly established or if the retirement is involuntary, it is to be treated as discharge" (*San Miguel Corporation vs. National*

[13] *Id.* at 58-59.

[14] *Id.* at 61-71.

[15] *Id.* at 73-74.

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

Labor Relations Commission, 293 SCRA 13, 21[,] citing the case of *De Leon vs. NLRC*, 100 SCRA 691 [1980]). Corollary, such involuntary retirement on the part of [respondents] was in effect an illegal dismissal.[17]

However, the CA held that the NLRC properly computed the retirement benefits of the respondents. Thus:

WHEREFORE, premises considered, the assailed Decision dated January 27, 2000 of the National Labor Relations Commission, Fourth Division, Cebu City is hereby **AMENDED** as follows:

1. The respondents are hereby ordered to pay the petitioners their retirement benefits computed as follows:

   (1) Alejandro Cadalin

   Jan. 13/88 to June 15/97 = 9 years, 5 months & 3 days

a.)	₱209.58/days x 15 days =	3,143.70
b.)	1/12 of 13th Month Pay =	523.95
c.)	5 days SILP =	1,047.90
		₱4,715.55

   ₱4,715.55/year of service x 9 years = ₱42,439.95
   Less: Retirement proceeds received (p. 107, records) 28,293.30
   Retirement differential of Alejandro Cadalin ₱14,146.65

   (2) Agripino Caballeda

   March 1989 to June 23/97 = 8 years, 3 months & 3 days

a.)	₱124.00/day x 15 days =	1,860.00
b.)	1/12 of 13th Month Pay	310.00
c.)	5 days SILP	620.00
		₱2,790.0

   ₱2,790/year of service x 8 years
   Retirement benefits of Agripino Caballeda ₱22,320.00

2. The respondents are further ordered to pay the petitioners their backwages computed from June 1997 up to 2002.

   SO ORDERED.[18]

---

[17] *Id.* at 162.

[18] *Id.* at 164-165.

On October 7, 2002, petitioners filed a Motion for Reconsideration[19] which the CA denied in its Resolution[20] dated January 8, 2003 for lack of merit.

Hence, this Petition raising the following issues:

I. WHETHER OR NOT THE RESPONDENTS AGRIPINO CABALLEDA AND ALEJANDRO CADALIN VOLUNTARILY RETIRED FROM THE SERVICE.

II. WHETHER OR NOT THE NEW RETIREMENT LAW CAN BE GIVEN RETROACTIVE EFFECT UNDER PAIN OF VI[O]LATING THE NON-IMPAIRMENT CLAUSE ENSHRINED IN THE BILL OF RIGHTS OF THE PHILIPPINE CONSTITUTION.

III. WHETHER OR NOT CABALLEDA IS A SEASONAL WORKER IN THE SUGAR INDUSTRY, AND NOT A CASUAL WORKER AS ERRONEOUSLY TERMED BY THE COURT OF APPEALS.

IV. WHETHER OR NOT THE FINDING OF THE COURT OF APPEALS THAT THE RESPONDENTS ARE ENTITLED TO RETIREMENT DIFFERENTIAL IS CONTRARY TO LAW AND JURISPRUDENCE.[21]

Petitioners submit that there is a need to review the records and evidence in this case since the factual findings of the LA and the CA are in conflict with those of the NLRC; that petitioners stand by the factual findings of the NLRC that Alejandro voluntarily retired from the service and as proof, he executed a valid quitclaim in favor of petitioners; that R.A. 7641 cannot be given retroactive effect since there is an existing CBA that covers the retirement benefits of the employees; that the Memorandum was no longer being implemented at the time of respondents' retirement since R.A. 7641 was already in effect at the time, thus, the CA erred when it ruled that respondents were forced to retire pursuant to said Memorandum; that the

[19] *Rollo,* pp. 39-47.

[20] *Id.* at 38.

[21] *Rollo,* pp. 15-16.

CBA entered into by URSUMCO and the NFL of which Alejandro is a member, is proof that URSUMCO stopped implementing the Memorandum and that, assuming the said Memorandum was still implemented despite the advent of R.A. 7641 and the CBA, retirement notices should have been served to the respondents as directed by the Memorandum or, at most, a collective action should have been taken against URSUMCO by NFL. With respect to Agripino, petitioners claim that he is merely a seasonal or project worker and not a casual worker since the sugar milling business is seasonal in nature; that as such, Agripino was not forced to retire, rather the termination of his employment was essentially based on the fact that the period stated in his contract with URSUMCO had already lapsed; and that assuming Agripino is not a project employee, his retirement pay should be reduced proportionately by the number of months per year that his services were not engaged by URSUMCO since the milling season covers only six months within a year.[22]

On the other hand, respondents aver that petitioners' plea for this Court to review the facts and pieces of evidence presented below is contrary to the rule that the issues in cases brought before this Court via a petition for review under Rule 45 are limited only to questions of law; that respondents were forced to retire at the age of 60 by virtue of the Memorandum which the employees did not ratify or freely agree upon, hence, respondents' dismissal from work was without valid cause and due process, amounting to illegal dismissal; that the Memorandum which unilaterally directed the compulsory retirement of employees reaching the age of 60 is contrary to the security of tenure guaranteed in the Constitution, Art. 287 of the Labor Code as amended by R.A. 7641, pertinent Labor and Civil Code provisions, public policy and good customs; and that the respondents were merely compelled to sign the prepared retirement forms and comply with the other retirement requirements because they were no longer given any work assignment and they could only receive their retirement benefits if they sever their employment relations with URSUMCO and comply with the latter's directives.

---

[22] Petitioner's memorandum dated May 17, 2005; *id*. at 134-158.

Respondents submit that they were given no option but to follow URSUMCO's orders regarding their retirement, hence, the same was not voluntary.[23]

Based on the foregoing, this Court is called upon to resolve three ultimate issues, as follows:

1. Whether R.A.7641 can be given retroactive effect;
2. Whether Agripino is a seasonal or project employee; and
3. Whether respondents were illegally terminated on account of compulsory retirement or the same voluntarily retired.

The Court's Ruling

The Petition lacks merit.

First. The issue of the retroactive effect of R.A. 7641 on prior existing employment contracts has long been settled. In *Enriquez Security Services, Inc. v. Cabotaje*,[24] we held:

> RA 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. **There should be little doubt about the fact that the law can apply to labor contracts still existing at the time the statute has taken effect, and that its benefits can be reckoned not only from the date of the law's enactment but retroactively to the time said employment contracts have started.**

This doctrine has been repeatedly upheld and clarified in several cases.[25] Pursuant thereto, this Court imposed two (2)

---

[23] Respondents' Memorandum dated April 4, 2005; *id*. at 113-132.

[24] G.R. No. 147993, July 21, 2006, 496 SCRA 169, 173-174, citing *Rufina Patis Factory v. Alusitain*, 434 SCRA 418 (2004), which further cited *Oro Enterprises, Inc. v. NLRC*, 238 SCRA 105 (1994) (Emphasis supplied).

[25] *Manuel L. Quezon University v. NLRC*, G.R. No. 141673, October 17, 2001, 367 SCRA 488, 495 (2001); *J.V. Angeles Construction Corporation v. NLRC*, G.R. No. 126888, April 14, 1999, 305 SCRA 734, 738; *Cabcaban v. NLRC (Fourth Division)*, G.R. No. 120256, August 18, 1997, Phil. 277 SCRA

essential requisites in order that R.A. 7641 may be given retroactive effect: (1) the claimant for retirement benefits was still in the employ of the employer at the time the statute took effect; and (2) the claimant had complied with the requirements for eligibility for such retirement benefits under the statute.

It is evident from the records that when respondents were compulsorily retired from the service, R.A. 7641 was already in full force and effect. The petitioners failed to prove that the respondents did not comply with the requirements for eligibility under the law for such retirement benefits. In sum, the aforementioned requisites were adequately satisfied, thus, warranting the retroactive application of R.A. 7641 in this case.

Second. It is a well-established rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court should raise only questions of law, subject to certain exceptions.[26] Whether or not Agripino was a seasonal/project employee or a regular employee is a question of fact.[27] As such, this Court is not at

---

671, 677; *Philippine Scout Veterans Security and Investigation Agency v. NLRC*, G.R. No. 115019, April 14, 1997, 271 SCRA 209, 215; and *CJC Trading, Inc. v. NLRC*, G.R. No. 115884, July 20, 1995, 246 SCRA 724.

[26] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Chuayuco Steel Manufacturing Corporation v. Buklod ng Manggagawa sa Chuayuco Steel Manufacturing Corporation*, G.R. No. 167347, January 31, 2007, 513 SCRA 621, 627-628).

[27] *Caseres v. Universal Robina Sugar Milling Corporation (URSUMCO)*, G.R. No. 159343, September 28, 2007, 534 SCRA 356, 359, citing *Hanjin*

liberty to review the said factual issue because our jurisdiction is generally limited to reviewing errors of law that the CA may have committed. Time and again, we have held that this Court is not a trier of facts, and it is not for us to re-examine and re-evaluate the probative value of evidence presented before the LA, the NLRC and the CA, which formed the basis of the assailed decision. Indeed, when their findings are in absolute agreement, the same are accorded not only respect but even finality as long as they are amply supported by substantial evidence.[28]

In this case, it is noteworthy that the LA, the NLRC and the CA are one in ruling that Agripino was not a casual employee much less a seasonal or project employee. In their findings, Agripino was considered a regular employee of URSUMCO. Consequently, such uniform finding of the LA, the NLRC, and the CA binds this Court. We find no cogent reason to depart from this ruling.

Third. Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[29] The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under Art. 287 of the Labor Code as amended, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years.[30]

In this case, it may be stressed that the CBA does not *per se* specifically provide for the compulsory retirement age nor does

---

Engineering and Construction Co., Ltd. v. Court of Appeals, 487 SCRA 78, 100 (2006).

[28] *Pepsi Cola Products Philippines, Inc. and Ernesto F. Gochuico v. Emmanuel V. Santos*, G.R. No. 165968, April 14, 2008.

[29] *Jaculbe v. Silliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445, 451.

[30] *Eastern Shipping Lines, Inc. v. Sedan*, G.R. No. 159354, April 7, 2006, 486 SCRA 565, 572.

it provide for an optional retirement plan. It merely provides that the retirement benefits accorded to an employee shall be in accordance with law. Thus, we must apply Art. 287 of the Labor Code which provides for two types of retirement: (a) compulsory and (b) optional. The first takes place at age 65, while the second is primarily determined by the collective bargaining agreement or other employment contract or employer's retirement plan. In the absence of any provision on optional retirement in a collective bargaining agreement, other employment contract, or employer's retirement plan, an employee may optionally retire upon reaching the age of 60 years or more, but not beyond 65 years, provided he has served at least five years in the establishment concerned. That prerogative is exclusively lodged in the employee.[31]

Indubitably, the voluntariness of the respondents' retirement is the meat of the instant controversy. Petitioners postulate that respondents voluntarily retired particularly when Alejandro filed his application for retirement, submitted all the documentary requirements, accepted the retirement benefits and executed a quitclaim in favor of URSUMCO. Respondents claim otherwise, contending that they were merely forced to comply as they were no longer given any work assignment and considering that the severance of their employment with URSUMCO is a condition precedent for them to receive their retirement benefits.

We rule in favor of respondents.

Generally, the law looks with disfavor on quitclaims and releases by employees who have been inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities and frustrate just claims of employees.[32] They are frowned upon as contrary to public policy. A quitclaim is ineffective in barring recovery of the full measure of a worker's

---

[31] *Capili v. National Labor Relations Commission,* G.R. No. 120802, June 17, 1997, 273 SCRA 576, 585-586.

[32] *JMM Promotions and Management, Inc. v. Court of Appeals,* 439 Phil. 1, 11 (2002).

rights, and the acceptance of benefits therefrom does not amount to estoppel.[33]

The reason is laid down in *Lopez Sugar Corporation v. Federation of Free Workers*:[34]

> The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of the job, he had to face harsh necessities of life. He thus found himself in no position to resist money proferred. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur*.

In exceptional cases, the Court has accepted the validity of quitclaims executed by employees if the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.[35] In this case, petitioners failed to establish all the foregoing requisites.

To be precise, only Alejandro was able to claim a partial amount of his retirement benefit. Thus, it is clear from the decisions of the LA, NLRC and CA that petitioners are still liable to pay Alejandro the differential on his retirement benefits. On the other hand, Agripino was actually and totally deprived of his retirement benefit.

Moreover, the petitioners, not the respondents, have the burden of proving that the quitclaim was voluntarily entered into.[36] In

---

[33] *R & E Transport, Inc. v. Latag*, 467 Phil. 355, 369 (2004).

[34] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 193.

[35] *Sime Darby Pilipinas, Inc. v. Arguilla*, G.R. No. 143542, June 8, 2006, 490 SCRA 183, 201.

[36] *EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496, 514, citing *Salonga v. NLRC*, 324 Phil. 330 (1996).

previous cases, we have considered, among others, the educational attainment of the employees concerned in upholding the validity of the quitclaims which they have executed in favor of their employers.[37] However, in *Becton Dickinson Phils., Inc. v. National Labor Relations Commission*,[38] we held:

There is no nexus between intelligence, or even the position which the employee held in the company when it concerns the pressure which the employer may exert upon the free will of the employee who is asked to sign a release and quitclaim. A lowly employee or a sales manager, as in the present case, who is confronted with the same dilemma of whether signing a release and quitclaim and accept what the company offers them, or refusing to sign and walk out without receiving anything, may do succumb to the same pressure, being very well aware that it is going to take quite a while before he can recover whatever he is entitled to, because it is only after a protracted legal battle starting from the labor arbiter level, all the way to this Court, can he receive anything at all. The Court understands that such a risk of not receiving anything whatsoever, coupled with the probability of not immediately getting any gainful employment or means of livelihood in the meantime, constitutes enough pressure upon anyone who is asked to sign a release and quitclaim in exchange of some amount of money which may be way below what he may be entitled to based on company practice and policy or by law.

---

[37] In *Mendoza, Jr. v. San Miguel Foods, Inc.,* G.R. No. 158684, May 16, 2005, 458 SCRA 664, we held that the petitioner therein was not an unsuspecting or a gullible person. As adverted to by the respondents, the petitioner was a graduate of the University of the Philippines, no less, with a Bachelor of Arts degree in Economics. Surely, he knew the nature and the legal effect of the said deed.

In *Agustilo v. Court of Appeals*, 417 Phil. 218 (2001), we held that the petitioner therein was not an illiterate person who needed special protection. The petitioner held a master's degree in library science and was an instructor in political science at the University of San Carlos. He was also at that time a law student in the said university.

In *Sicangco v. National Labor Relations Commission*, G.R. No. 110261, August 4, 1994, 235 SCRA 96, we held that the petitioner therein, who was a lawyer, could not renege on the release, waiver and quitclaim he executed, since lawyers are not easily coerced into signing legal documents.

[38] G.R. Nos. 159969 & 160116, November 15, 2005, 475 SCRA 123, 147.

It is worth mentioning that the respondents are rank-and-file employees. They are simple folks who rely on their work for the daily sustenance of their respective families. Absent any convincing proof of voluntariness in the submission of the documentary requirements and in the execution of the quitclaim, we cannot simply assume that respondents were not subjected to the very same pressure mentioned in *Becton*. Furthermore, the fact that respondents filed a complaint for illegal dismissal against petitioners completely negates their claim that respondents voluntarily retired. To note, respondents vigorously pursued this case against petitioners, all the way up to this Court. Without doubt, this is a manifestation that respondents had no intention of relinquishing their employment, wholly incompatible to petitioners' assertion that respondents voluntarily retired.[39]

We find no reversible error and, thus, sustain the ruling of the CA that respondents did not voluntarily retire but were rather forced to retire, tantamount to illegal dismissal.

WHEREFORE, the instant Petition is *DENIED*. The Decision dated September 11, 2002 and the Resolution dated January 8, 2003 of the Court of Appeals in CA-G.R. SP No. 59552 are hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

---

[39] *Amkor Technology Philippines, Inc. v. Juangco*, G.R. No. 166507, September 27, 2006, 503 SCRA 683, 689, citing *Molave Tours Corporation v. National Labor Relations Commission*, 250 SCRA 325, 330 (1995).

THIRD DIVISION

[G.R. No. 159578. July 28, 2008]

ROGELIA DACLAG and ADELINO DACLAG (deceased) Substituted by RODEL M. DACLAG and ADRIAN M. DACLAG, *petitioners, vs.* **ELINO MACAHILIG, ADELA MACAHILIG, CONRADO MACAHILIG, LORENZA HABER and BENITA DEL ROSARIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT ABSENT ANY OF THE RECOGNIZED EXCEPTIONS. — The first two issues raised for resolution are factual. 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 the trial of the case, considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could

justify a different conclusion, none of these exceptions has been shown to apply to the present case and, hence, this Court may not review the findings of fact made by the lower courts.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; SINCE THE VENDOR WAS NOT THE OWNER OF THE LAND SOLD TO PETITIONERS, SHE HAD NO RIGHT TO DISPOSE AND CONVEY THE SAME. — We find no cogent reason to depart from the findings of both the trial court and the CA that Maxima was not the owner of the land she sold to petitioners, and that the one half northern portion of such land was owned by the respondents; that Maxima had no right to dispose of the land and, thus, she had no right to convey the same. To repeat, records show that Maxima entered into a Deed of Extra-judicial Partition with the heirs of her two deceased brothers, namely: Mario and Eusebio, over seven parcels of land owned by Candido and Gregoria Macahilig. One of these lands was the irrigated riceland with an area of 1,896 sq. meters which, per the Deed of Partition, was divided between the heirs of Mario and Eusebio; and the former got the one half southern portion, while the latter got the one half northern portion. Maxima affixed her thumbmark to the Deed. This parcel of riceland was sold by Maxima to petitioners. However, Maxima, at the time of the execution of the Deed of Sale over this parcel of land in favor of petitioner on May 23, 1984, had no right to sell the same as she was not the owner thereof. In fact, Maxima, with the conformity of her husband Pedro, had even executed a Statement of Conformity, in which she affirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of the partition of shares therein. She attested to the fact that the five parcels of land subject of the Deed of Extra-judicial Partition, which were declared in her name under different tax declarations, were actually properties of her deceased parents; and that she waived all her rights over the lands or portions thereof adjudicated to all her co-heirs. Neither Maxima nor any of her heirs ever questioned the validity of these two above-mentioned documents to which she affixed her thumbmarks. Notably, when the instant complaint was filed by respondents against Maxima and petitioners in 1991, in which respondents claimed as basis of their ownership of the one half northern portion of the riceland was the Deed of Extra-judicial Partition, Maxima, while still living at that time, as

she died in 1993, never denied the same. As already stated, she failed to file an answer and was declared in default. In a contract of sale, it is essential that the seller is the owner of the property he is selling. Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold. Also, Article 1459 of the Civil Code provides that the thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. Maxima's execution of the Deed of Sale selling Parcel One, part of which is respondents' one half northern portion, was not valid and did not transfer ownership of the land to petitioners, as Maxima had no title or interest to transfer. It is an established principle that no one can give what one does not have — *nemo dat quod non habet.* Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.

3. ID.; PROPERTY; OWNERSHIP; VENDOR'S POSSESSION OF THE LAND WAS NOT IN THE CONCEPT OF AN OWNER. — Maxima's possession of the subject land was by reason of her request to her daughter Penicula, who was installed by respondents as tenant after the execution of the Deed of Extra-judicial Partition, as Maxima wanted to farm the land so that she could have a share in the produce, to which Penicula acceded out of pity. It was also established that after the execution of the Deed of Extra-judicial Partition, Penicula as tenant was able to farm the subject land for one cropping year before she allowed her mother Maxima to farm the land thereafter; and, at that time, Penicula gave the corresponding share of the produce of that one crop year to Adela, one of herein respondents, thus establishing respondents' ownership of the subject land. Evidently, Maxima's possession of the land was not in the concept of an owner.

4. ID.; ID.; ID.; WHILE THE LAND WAS DECLARED IN THE VENDOR'S NAME FOR TAXATION PURPOSES, IT DID NOT ESTABLISH OWNERSHIP OF THE SAME; A TAX DECLARATION, BY ITSELF, IS NOT CONSIDERED CONCLUSIVE EVIDENCE OF OWNERSHIP. — While the land was declared in Maxima's name for taxation purposes, it did not establish Maxima's ownership of the same. We have held that a tax declaration, by itself, is not considered conclusive evidence of ownership. It is merely an indicium of a claim of

ownership. Because it does not by itself give title, it is of little value in proving one's ownership. Petitioners' reliance on Maxima's tax declaration in assuming that she owned Parcel One is an erroneous assumption that should not prejudice the rights of the real owners.

5. ID.; ID.; ID.; THE DEED OF EXTRA-JUDICIAL PARTITION AND STATEMENT OF CONFORMITY WHEREIN THE VENDOR CATEGORICALLY DECLARED THAT THE LAND WAS ACTUALLY OWNED BY HER DECEASED PARENTS IS A DECLARATION AGAINST INTEREST. — The fact that a mortgage was constituted on the land while the same was in Maxima's name would not make Maxima the owner thereof. Maxima's non-ownership of Parcel One was clearly established by the Deed of Extra-judicial Partition and the Statement of Conformity, wherein she categorically declared that the land was actually owned by her deceased parents, to which she separately affixed her thumbmarks. Both documents showed declarations against her interest in the land. A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.

6. ID.; ID.; ID.; COMPLAINT FOR RECONVEYANCE IS STILL WITHIN THE TEN-YEAR PRESCRIPTIVE PERIOD. — Respondents have specifically prayed that petitioners be ordered to restore and reconvey to them the subject land. In an action for reconveyance, the issue involved is one of ownership; and for this purpose, evidence of title may be introduced. Respondents had sufficiently established that Parcel One, covered by OCT No. P-13873, of which respondents' northern one half portion formed a part, was not owned by Maxima at the time she sold the land to petitioners. We have earlier discussed the evidence presented by respondents establishing that Maxima had no claim of ownership over the land sold by her to petitioners. An action for reconveyance prescribes in 10 years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property. Records show that while the land was registered in the name of petitioner Rogelia in 1984, the instant complaint for reconveyance was filed by the respondents in 1991, and was thus still within the ten-year prescriptive period.

7. ID.; ID.; ID.; DEFENSE OF HAVING PURCHASED A PROPERTY IN GOOD FAITH MAY BE AVAILED OF ONLY WHERE REGISTERED LAND IS INVOLVED. — Petitioners claim that they were innocent buyers in good faith and for value; that there was no evidence showing that they were in bad faith when they purchased the subject land; that Article 526 of the Civil Code provides that he is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it; and that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. Notably, petitioners bought the property when it was still an unregistered land. The defense of having purchased the property in good faith may be availed of only where registered land is involved and the buyer had relied in good faith on the clear title of the registered owner.

8. ID.; LAND REGISTRATION; POSSESSION OF A CERTIFICATE OF TITLE ALONE DOES NOT NECESSARILY MAKE ONE THE TRUE OWNER OF THE PROPERTY DESCRIBED THEREIN; LAND REGISTRATION LAWS DO NOT GIVE THE HOLDER ANY BETTER TITLE THAN WHAT HE ACTUALLY HAS. — While petitioners were able to secure a certificate of title covering Parcel One in petitioner Rogelia's name, their possession of a certificate of title alone does not necessarily make them the true owners of the property described therein. Our land registration laws do not give the holder any better title than what he actually has. In *Naval v. Court of Appeals*, we held: Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner. x x x notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject

to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right. We find that reconveyance of the subject land to respondents is proper. The essence of an action for reconveyance is that the free patent and certificate of title are respected as incontrovertible. What is sought is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right.

9. ID.; ID.; PETITIONER'S CLAIM THAT THE SUBJECT LAND IS A PUBLIC LAND WAS RAISED ONLY FOR THE FIRST TIME BEFORE THE COURT; ISSUES NOT RAISED AND/OR VENTILATED IN THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL AND CANNOT BE CONSIDERED FOR REVIEW; TO ALLOW SUCH PRACTICE WILL BE TRAMPLING ON THE BASIC PRINCIPLES OF FAIR PLAY, JUSTICE AND DUE PROCESS. — Petitioners claim that the subject land is a public land, and that petitioners were issued title over this land in 1984; that respondents did not present any evidence to prove that the subject land was already a private land prior to their acquisition and the issuance of a free patent title to them; that the presumption that the subject land was formerly part of the mass of alienable lands of public domain under the Regalian doctrine, and was regularly granted to petitioners by way of free patent and certificate of title, remains incontrovertible in favor of petitioner. This issue was only raised for the first time in petitioners' Memorandum filed with us. Well-settled is the rule that issues not raised and/or ventilated in the trial court cannot be raised for the first time on appeal and cannot be considered for review — to consider questions belatedly raised tramples on the basic principles of fair play, justice and due process.

10. ID.; HUMAN RELATIONS; PRINCIPLE OF UNDUE ENRICHMENT; THE COURT UPHELD THE TRIAL COURT'S ORDER FOR PETITIONERS TO PAY RESPONDENTS THEIR CORRESPONDING SHARE IN THE PRODUCE OF THE SUBJECT LAND FROM THE

TIME THEY WERE DEPRIVED THEREOF UNTIL POSSESSION IS RESTORED TO THEM. — We find no error committed by the CA in affirming the RTC's order for petitioners to pay respondents their corresponding share in the produce of the subject land from the time they were deprived thereof until the possession is restored to them. As aptly stated by the CA, thus: It is said that one of the attributes of ownership is the right to enjoy and dispose of the thing owned. The right to enjoy included the right to receive the produce of the thing. The plaintiffs-appellees, as true owners of the subject land were deprived of their property when Maxima Divison illegally sold it to spouses Daclags. As such, equity demands that the plaintiff-appellees be given what rightfully belonged to them under the time honored principle that a person cannot enrich himself at the expense of another.

APPEARANCES OF COUNSEL

Romeo P. Inocencio for petitioners.
Adolfo M.Iligan for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated October 17, 2001 and the Resolution[2] dated August 7, 2003 of the Court of Appeals (CA) in CA G.R. CV No. 48498.

The antecedent facts:

During their lifetime, the spouses Candido and Gregoria Macahilig were the owners of seven parcels of land, all located

---

[1] Penned by Justice Ramon Mabutas, Jr. with the concurrence of Justices Roberto A. Barrios (retired) and Edgardo P. Cruz; *rollo*, pp. 35-44

[2] Penned by Justice Roberto A. Barrios and concurred in by Justices Edgardo P. Cruz and Eliezer R. delos Santos, pp. 46-47.

in Numancia, Aklan. They had seven children, namely: Dionesio, Emeliano, Mario, Ignacio, Eusebio, Tarcela and Maxima.

On March 18, 1982, Maxima, a daughter of Candido and Gregoria entered into a Deed of Extra-judicial Partition[3] with the heirs of her deceased brothers, Mario and Eusebio Macahilig, over the seven parcels of land. The same deed stated that Dionesio was already deceased but was survived by his daughter, Susana Briones; Emeliano was out of the country; Ignacio and Tarcela were also both deceased but were survived by three children each.

One of the properties partitioned in the Deed was a parcel of irrigated riceland located at Poblacion, Numancia, Aklan, with an area of 1,896 square meters declared in the name of Maxima under Tax Declaration No. 644 which was denominated as "Parcel One." This Parcel One was divided between Vicenta Macahilig Galvez for the heirs of Mario Macahilig, who was given the one half southern portion of the land; and Adela Macahilig for the heirs of Eusebio Macahilig, who got the one half northern portion. The Deed was notarized by Municipal Judge Francisco M. Ureta in his capacity as *ex-officio* notary public. The heirs of Eusebio Macahilig are the herein respondents.

On March 19, 1982, Maxima executed a Statement of Conformity[4] in which she confirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of partition and adjudication made therein. She also attested that five parcels of land in the deed were declared in her name for taxation purposes, although said lands were actually the property of her deceased parents Candido and Gregoria Macahilig; that she waived, renounced and relinquished all her rights to the land adjudicated to all her co-heirs in the deed; and that she had already sold one parcel before the deed was executed, which was considered as her advance share. Pedro Divison, Maxima's husband, also affixed his signature to the Statement of Conformity.

---

[3] Records, Exhibit "A"; pp. 113-116.

[4] *Id.*, Exhibit "D", p. 119.

On May 23, 1984, Maxima sold Parcel One to spouses Adelino and Rogelia Daclag (petitioners) as evidenced by a Deed of Sale.[5]

On July 17, 1984, OCT No. P-13873[6] was issued in the name of petitioner Rogelia M. Daclag by virtue of her free patent application.

On December 16, 1991, Elino Macahilig, Adela Macahilig, Conrado Macahilig, Lorenza Haber and Benita del Rosario (respondents) filed with the Regional Trial Court (RTC) of Kalibo, Aklan a complaint for recovery of possession and ownership, cancellation of documents and damages against Maxima and petitioners, docketed as Civil Case No. 4334.

Respondents alleged that they were the lawful owners and previous possessors of the one half northern portion of Parcel One by virtue of a Deed of Extra-judicial Partition; that since they were all residents of Caloocan City, their land was possessed by their first cousin, Penicula Divison Quijano, Maxima's daughter, as tenant thereon, as she was also in possession of the one half southern portion as tenant of the heirs of Mario Macahilig; that sometime in 1983, upon request of Maxima and out of pity for her as she had no share in the produce of the land, Penicula allowed Maxima to farm the land; that without their knowledge, Maxima illegally sold on May 23, 1984, the entire riceland to petitioners, who are now in possession of the land, depriving respondents of its annual produce valued at ₱4,800.00.

In their Answer with Cross-Claim, petitioners contended that: petitioner Rogelia had been the registered owner of the entire riceland since 1984 as evidenced by OCT No. P-13873; her title had become incontrovertible after one year from its issuance; they purchased the subject land in good faith and for value from co-defendant Maxima who was in actual physical possession of the property and who delivered and conveyed the same to

---

[5] *Id.*, Exhibit "B", p. 117.

[6] *Id.*, Exhibit "3", p. 12.

them; they were now in possession and usufruct of the land since then up to the present; respondents were barred by laches for the unreasonable delay in filing the case. They also filed a cross-claim against Maxima for whatever charges, penalties and damages that respondents may demand from them; and they prayed that Maxima be ordered to pay them damages for the fraud and misrepresentation committed against them.

Respondents subsequently filed an Amended Complaint, upon learning that petitioners were issued OCT No. 13873 by virtue of their free patent application, and asked for the reconveyence of the one half northern portion of the land covered by such title.

The land in question was delimited in the Commissioner's Report and sketch submitted by Bernardo G. Sualog as the one half northern portion, which had an area of 1178 sq. meters. The Report and the sketch were approved by the RTC on June 22, 1991.

For failure of Maxima to file an answer, the RTC declared her in default both in the complaint and cross-claim against her.

After trial, the RTC rendered its Decision[7] dated November 18, 1994, the dispositive portion of which reads:

WHEREFORE, finding preponderance of evidence in favor of plaintiffs [respondents], judgment is hereby rendered as follows:

1. The deed of sale dated May 23, 1984, executed by Maxima Divison in favor of Adelino Daclag and Rogelia Daclag before Notary Public Edgar R. Peralta and docketed in his notarial register as Doc. No. 137, Page No. 30, Book No. VII, Series of 1984 is declared NULL and VOID;

2. The plaintiffs are hereby declared the true and lawful owners and entitled to the possession of the northern one-half (½) portion of the land described under paragraph 2 of the amended complaint and designated as Exhibit "F-1" in the commissioners' sketch with an area of 1,178 square meters;

3. The defendants-spouses Adelino and Rogelia Daclag [petitioners] are hereby ordered and directed to vacate the

[7] Per Judge Sheila Y. Martelino Cortes, Records, pp. 161-167.

land described in the preceding paragraph and restore and deliver the possession thereof to the plaintiffs;

4. The defendants are ordered to execute a deed of reconveyance in favor of the plaintiffs over the land described in paragraph 2 hereof;

5. The defendants are ordered, jointly and severally, to pay the plaintiffs ten (10) cavans of palay per annum beginning the second cropping of 1984 until the time the possession of the land in question is restored to the plaintiffs; and

6. The defendants are ordered, jointly and severally, to pay the plaintiffs reasonable attorney's fees in the amount of ₱3,000.00 plus cost of the suit.[8]

The RTC found that respondents were able to establish that Parcel One was divided between the heirs of Mario and the heirs of Eusebio, with the former getting the one half southern portion and the latter the one half northern portion embodied in a Deed of Extra-judicial partition, which bore Maxima's thumbmarks; that nobody questioned the Deed's validity, and no evidence was presented to prove that the document was not validly and regularly executed; that Maxima also executed a duly notarized Statement of Conformity dated March 19, 1982 with the conformity of her husband, Pedro. The RTC concluded that when Maxima executed the Deed of Sale in favor of petitioners on May 23, 1984, Maxima had no right to sell that land as it did not belong to her; that she conveyed nothing to petitioners; and that the deed of sale should be declared null and void.

In disposing the issue of whether petitioners could be considered innocent purchasers for value, the RTC ruled that petitioners could not even be considered purchasers, as they never acquired ownership of the land since the sale to them by Maxima was void; and that petitioners' act of reflecting only the price of ₱5,000.00 in the Deed of Sale to avoid paying taxes to the BIR should be condemned for defrauding the government and thus should not be given protection from the courts.

[8] *Id*. at 166-167.

The RTC further ruled that since petitioners were able to obtain a free patent on the whole land in petitioner Rogelia's name, reconveyance to respondents of the 1,178 sq. meter northern portion of the land was just and proper; that the respondents were entitled to a share in the harvest at two croppings per year after deducting the share of the tenant; that since Maxima died in October 1993, whatever charges and claims petitioners may recover from her expired with her.

Aggrieved, petitioners filed their appeal with the CA.

On October 17, 2001, the CA dismissed the appeal and affirmed the RTC decision.

The CA ruled that since Maxima had no right to sell the land as she was not the rightful owner thereof, nothing was conveyed to petitioners; that a person who acquired property from one who was not the owner and had no right to dispose of the same, obtained the property without right of title, and the real owner may recover the same from him.

The CA found that since respondents were unaware of the sale, it was not a surprise that they did not question petitioners' application for a free patent on the subject land; that the possession by Maxima of the subject land did not vest ownership in her, as her possession was not in the concept of an owner; and that petitioners were not purchasers in good faith. It also found that the right to enjoy included the right to receive the produce of the thing; that respondents as true owners of the subject land were deprived of their property when Maxima illegally sold it to petitioners; and thus, equity demanded that respondents be given what rightfully belonged to them under the principle that a person cannot enrich himself at the expense of another.

Hence, herein petition on the following grounds:

A. THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT DECLARED THAT HEREIN PETITIONERS HAD NO VALID TITLE OVER THE LAND IN QUESTION.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONERS ARE NOT PURCHASERS OR BUYERS IN GOOD FAITH.

C. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE DECISION OF THE LOWER COURT IN ORDERING THE DEFENDANTS-PETITIONERS JOINTLY AND SEVERALLY TO PAY PER ANNUM BEGINNING THE SECOND CROPPING OF 1984 UNTIL THE TIME THE POSSESSION OF THE LAND IN QUESTION IS RESTORED TO THE PLAINTIFFS [respondents].[9]

The issues for resolution are (1) whether Maxima was the previous owner of Parcel One, which included respondents' one half northern portion, now covered by OCT No. P-13873; 2) whether petitioners could validly invoke the defense of purchasers in good faith; and (3) whether reconveyance is the proper remedy.

Preliminarily, we would like to state the inescapable fact that the Extra-judicial partition of the estate of Candido Macahilig involving the seven parcels of land was made only between Maxima and the heirs of her two deceased brothers Mario and Eusebio.

Section 1 of Rule 74 of the Rules of Court provides:

Section 1. *Extrajudicial settlement by agreement between heirs.* — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action for partition. x x x

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[9] *Rollo*, pp. 17-18.

Records do not show that there has been any case filed by the other heirs who had not participated in the Deed of Extra-judicial Partition and were questioning the validity of such partition. Thus, the resolution of the present case concerns only the issues between the parties before us and will not in any way affect the rights of the other heirs who have not participated in the partition.

The first two issues raised for resolution are factual. 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 the trial of the case, considering that the findings of facts of the CA are conclusive and binding on the Court.[10] While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion,[11] none of these

---

[10] *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 263.

[11] *Id*., citing *Rivera v. Roman*, G.R. No. 142402, September 20, 2005, 470 SCRA 276; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279 (2002).

exceptions has been shown to apply to the present case and, hence, this Court may not review the findings of fact made by the lower courts.

We find no cogent reason to depart from the findings of both the trial court and the CA that Maxima was not the owner of the land she sold to petitioners, and that the one half northern portion of such land was owned by the respondents; that Maxima had no right to dispose of the land and, thus, she had no right to convey the same.

To repeat, records show that Maxima entered into a Deed of Extra-judicial Partition with the heirs of her two deceased brothers, namely: Mario and Eusebio, over seven parcels of land owned by Candido and Gregoria Macahilig. One of these lands was the irrigated riceland with an area of 1,896 sq. meters which, per the Deed of Partition, was divided between the heirs of Mario and Eusebio; and the former got the one half southern portion, while the latter got the one half northern portion. Maxima affixed her thumbmark to the Deed. This parcel of riceland was sold by Maxima to petitioners. However, Maxima, at the time of the execution of the Deed of Sale over this parcel of land in favor of petitioner on May 23, 1984, had no right to sell the same as she was not the owner thereof.

In fact, Maxima, with the conformity of her husband Pedro, had even executed a Statement of Conformity, in which she affirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of the partition of shares therein. She attested to the fact that the five parcels of land subject of the Deed of Extra-judicial Partition, which were declared in her name under different tax declarations, were actually properties of her deceased parents; and that she waived all her rights over the lands or portions thereof adjudicated to all her co-heirs.

Neither Maxima nor any of her heirs ever questioned the validity of these two above-mentioned documents to which she affixed her thumbmarks. Notably, when the instant complaint was filed by respondents against Maxima and petitioners in 1991, in which respondents claimed as basis of their ownership of the one half northern portion of the riceland was the Deed of Extra-

judicial Partition, Maxima, while still living at that time, as she died in 1993, never denied the same. As already stated, she failed to file an answer and was declared in default.

In a contract of sale, it is essential that the seller is the owner of the property he is selling.[12] Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold.[13] Also, Article 1459 of the Civil Code provides that the thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. Maxima's execution of the Deed of Sale selling Parcel One, part of which is respondents' one half northern portion, was not valid and did not transfer ownership of the land to petitioners, as Maxima had no title or interest to transfer. It is an established principle that no one can give what one does not have — *nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.[14]

Petitioners insist that Maxima owned the subject land as shown by her actual and continuous possession of the same; that it was declared in her name for taxation purposes; that throughout the time that Maxima and her children were in possession of the property, she never gave any share of the produce to respondents; and that Maxima even mortgaged the land to a bank.

We are not persuaded.

Maxima's possession of the subject land was by reason of her request to her daughter Penicula, who was installed by respondents as tenant after the execution of the Deed of Extra-

---

[12] *Noel v. Court of Appeals*, G.R. No. 59550, January 11, 1995, 240 SCRA 78, 88.

[13] Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent.

[14] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102,112 citing *Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals*, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 363.

judicial Partition, as Maxima wanted to farm the land so that she could have a share in the produce, to which Penicula acceded out of pity.[15] It was also established that after the execution of the Deed of Extra-judicial Partition, Penicula as tenant was able to farm the subject land for one cropping year before she allowed her mother Maxima to farm the land thereafter; and, at that time, Penicula gave the corresponding share of the produce of that one crop year to Adela,[16] one of herein respondents, thus establishing respondents' ownership of the subject land. Evidently, Maxima's possession of the land was not in the concept of an owner.

While the land was declared in Maxima's name for taxation purposes, it did not establish Maxima's ownership of the same. We have held that a tax declaration, by itself, is not considered conclusive evidence of ownership.[17] It is merely an indicium of a claim of ownership.[18] Because it does not by itself give title, it is of little value in proving one's ownership.[19] Petitioners' reliance on Maxima's tax declaration in assuming that she owned Parcel One is an erroneous assumption that should not prejudice the rights of the real owners.

The fact that a mortgage was constituted on the land while the same was in Maxima's name would not make Maxima the owner thereof. Maxima's non-ownership of Parcel One was clearly established by the Deed of Extra-judicial Partition and the Statement of Conformity, wherein she categorically declared

---

[15] TSN, February 24, 1993, pp. 4-5.

[16] TSN, March 24, 1993, p. 7.

[17] *Titong v. Court of Appeals*, G.R. No. 111141, March 6, 1998, 287 SCRA 102, 115 citing *Rivera v. Court of Appeals*, 314 Phil. 57 (1995); *Republic v. Intermediate Appellate Court*, G.R. No. 74380, July 5, 1993, 224 SCRA 285, 296; *De Jesus v. Court of Appeals*, G.R. No. 57092, January 21, 1993, 217 SCRA 307, 317.

[18] *Id.*, citing *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, March 2, 1993, 219 SCRA 339, 348.

[19] *Id.*; *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701.

that the land was actually owned by her deceased parents, to which she separately affixed her thumbmarks. Both documents showed declarations against her interest in the land. A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.[20]

While petitioners were able to secure a certificate of title covering Parcel One in petitioner Rogelia's name, their possession of a certificate of title alone does not necessarily make them the true owners of the property described therein. Our land registration laws do not give the holder any better title than what he actually has.[21]

In *Naval v. Court of Appeals*,[22] we held:

> Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.
>
> x x x notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[23]

---

[20] *Noda v. Cruz-Arnaldo*, G.R. No. 57322, June 22, 1987, 151 SCRA 227.

[21] *Heirs of Romana Ingjug-Tiro v. Casals*, G.R. No. 134718, August 20, 2001, 363 SCRA 435, 442.

[22] *Supra* note 14, at 113.

[23] *Id*.

We find that reconveyance of the subject land to respondents is proper. The essence of an action for reconveyance is that the free patent and certificate of title are respected as incontrovertible. What is sought is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right.[24]

Respondents have specifically prayed that petitioners be ordered to restore and reconvey to them the subject land. In an action for reconveyance, the issue involved is one of ownership; and for this purpose, evidence of title may be introduced. Respondents had sufficiently established that Parcel One, covered by OCT No. P-13873, of which respondents' northern one half portion formed a part, was not owned by Maxima at the time she sold the land to petitioners. We have earlier discussed the evidence presented by respondents establishing that Maxima had no claim of ownership over the land sold by her to petitioners.

An action for reconveyance prescribes in 10 years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property.[25] Records show that while the land was registered in the name of petitioner Rogelia in 1984, the instant complaint for reconveyance was filed by the respondents in 1991, and was thus still within the ten-year prescriptive period.

Petitioners claim that they were innocent buyers in good faith and for value; that there was no evidence showing that they were in bad faith when they purchased the subject land; that Article 526 of the Civil Code provides that he is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it; and that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

---

[24] *Mendizabel v. Apao*, G.R. No. 143185, February 26, 2006, 482 SCRA 587, 608.

[25] *Leyson v. Bontuyan*, G.R. No. 156357, February 18, 2005, 452 SCRA 94, 113.

Notably, petitioners bought the property when it was still an unregistered land. The defense of having purchased the property in good faith may be availed of only where registered land is involved and the buyer had relied in good faith on the clear title of the registered owner.[26]

In *Ong v. Olasiman*[27] in which a claim of good faith was raised by petitioner who bought an unregistered land, we held:

> Finally, petitioners' claim of good faith does not lie too as it is irrelevant:
>
> [T]he issue of good faith or bad faith of the buyer is relevant only where the subject of the sale is registered land and the purchaser is buying the same from the registered owner whose title to the land is clean x x x in such case the purchaser who relies on the clean title of the registered owner is protected if he is a purchaser in good faith for value. Since the properties in question are unregistered lands, petitioners as subsequent buyers thereof did so at their peril. Their claim of having bought the land in good faith, *i.e.*, without notice that some other person has a right to or interest in the property, would not protect them if it turns out, as it actually did in this case, that their seller did not own the property at the time of the sale.[28]

Petitioners claim that the subject land is a public land, and that petitioners were issued title over this land in 1984; that respondents did not present any evidence to prove that the subject land was already a private land prior to their acquisition and the issuance of a free patent title to them; that the presumption that the subject land was formerly part of the mass of alienable lands of public domain under the Regalian doctrine, and was regularly granted to petitioners by way of free patent and certificate of title, remains incontrovertible in favor of petitioner.

This issue was only raised for the first time in petitioners' Memorandum filed with us. Well-settled is the rule that issues

---

[26] *Naval v. Court of Appeals*, *supra* note 14, at 111; *David v. Bandin*, G.R. No. L-48322, April 8, 1987, 149 SCRA 140, 150.

[27] G.R. No. 162045, March 28, 2006, 485 SCRA 464.

[28] *Ong v. Olasiman*, *supra* note 27, at 472.

not raised and/or ventilated in the trial court cannot be raised for the first time on appeal and cannot be considered for review — to consider questions belatedly raised tramples on the basic principles of fair play, justice and due process.[29]

Finally, we find no error committed by the CA in affirming the RTC's order for petitioners to pay respondents their corresponding share in the produce of the subject land from the time they were deprived thereof until the possession is restored to them. As aptly stated by the CA, thus:

> It is said that one of the attributes of ownership is the right to enjoy and dispose of the thing owned, The right to enjoy included the right to receive the produce of the thing. The plaintiffs-appellees, as true owners of the subject land were deprived of their property when Maxima Divison illegally sold it to spouses Daclags. As such, equtiy demands that the plaintiff-appeellees be given what rightfully belonged to them under the time honored principle that a person cannot enrich himself at the expense of another.

WHEREFORE, the petition for review is *DENIED*. The Decision dated October 17, 2001 and Resolution dated August 7, 2003 of the Court of Appeals are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

---

[29] *Cruz v. Fernando*, G.R. No. 145470, December 9, 2005, 477 SCRA 173, 182; *Department of Agrarian Reform v. Franco*, G.R. No. 147479, September 26, 2005, 471 SCRA 74, 92-93; *Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671, 678; *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503-04; *De Rama v. Court of Appeals*, G.R. No. 131136, February 28, 2001, 353 SCRA 94; *Caltex (Phils.), Inc. v. Court of Appeals*, G.R. No. 97753, August 10, 1992, 212 SCRA 448, 461; *BA Finance Corporation v. Court of Appeals*, G.R. No. 82040, 27 August 1991, 201 SCRA 157, 164.

SECOND DIVISION

[G.R. No. 161196. July 28, 2008]

BLUE ANGEL MANPOWER AND SECURITY SERVICES, INC., *petitioner, vs.* **HON. COURT OF APPEALS, ROMEL CASTILLO, WILSON CIRIACO, GARY GARCES, and CHESTERFIELD MERCADER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; NO QUESTIONS WILL BE ENTERTAINED ON APPEAL UNLESS THEY HAVE BEEN RAISED BELOW; CASE AT BAR. — It is to be stressed, as a preliminary consideration, that the illegality of Mercader's dismissal and his entitlement to reinstatement with backwages is now a settled issue, the NLRC's holding on that regard being conclusive on Blue Angel when it failed, as the CA aptly observed, to appeal that portion of the NLRC's decision. It is a settled rule that no questions will be entertained on appeal unless they have been raised below. Accordingly, any disposition henceforth made herein bearing on the illegality of dismissal shall be limited only to the case of private respondents Castillo, Ciriaco, and Garces. When mention, therefore, is hereinafter made of private respondents or respondents-guards, the reference is to Castillo, Ciriaco and Garces only, unless the context indicates that it shall include Mercader.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESIGNATION IS INCONSISTENT WITH THE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL. — [T]he execution of the resignation letters was undisputed, but the aforementioned circumstances of this case and the fact that private respondents filed a complaint for illegal dismissal from employment against Blue Angel completely negate the claim that private respondents voluntarily resigned. Well-entrenched is the rule that resignation is inconsistent with the filing of a complaint for illegal dismissal. To constitute resignation, the resignation must be unconditional with the intent to operate as such. There must be clear intention

to relinquish the position. In this case, private respondents actively pursued their illegal dismissal case against Blue Angel such that they cannot be said to have voluntarily resigned from their jobs.

3. ID.; ID.; ID.; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO TWO RELIEFS, NAMELY: BACKWAGES AND REINSTATEMENT; THE AWARD OF ONE DOES NOT PRECLUDE THE OTHER. — As the law now stands, illegally dismissed employees are entitled to two reliefs, namely: backwages and reinstatement. They are entitled to reinstatement, if viable, or separation pay, if reinstatement is no longer feasible, and backwages. The award of one does not preclude the other as the Court had, in proper cases, ordered the payment of both. Where an employee would have been entitled to reinstatement with full backwages, but circumstances, *i.e.*, strained relationships, make reinstatement impossible, the more equitable disposition would be to award separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, in addition to full backwages, inclusive of allowances, and benefits or their monetary equivalent, computed from the time the employee's compensation was withheld up to the time of the employee's actual reinstatement.

APPEARANCES OF COUNSEL

Law Firm of Chan Robles & Associates for petitioner.
Public Attorney's Office for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition for review under Rule 45, petitioner Blue Angel Manpower and Security Services, Inc. (Blue Angel) assails and seeks to reverse the Decision[1] dated February 26, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 67478, in part

[1] *Rollo*, pp. 78-85. Penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Salvador J. Valdez, Jr. (now retired) and Mario L. Guariña III.

setting aside the Decision dated May 9, 2001 of the National Labor Relations Commission (NLRC).

The facts are as found by the CA.

Blue Angel, a messengerial and security agency, hired private respondents Romel Castillo, Wilson Ciriaco, Gary Garces, and Chesterfield Mercader as security guards and detailed them at the National College of Business and Arts (NCBA) in Cubao, Quezon City.

On April 20, 1999, Castillo and Mercader, later joined by Ciriaco and Garces, filed a complaint for illegal deductions and other money claims against Blue Angel. Eventually, they amended their complaint to include illegal dismissal. According to the four guards, they were required, while still with Blue Angel, to work from 7:00 a.m. to 7:00 p.m. without overtime and premium holiday pay, among other benefits. They also alleged receiving only PhP 5,000 a month or PhP 166 per day and, from this amount, Blue Angel deducted PhP 100 as cash bond. They further averred that Blue Angel, when apprised of their original complaint, illegally terminated Garces and Ciriaco on April 11 and 12, 1999, respectively, and Castillo and Mercader on April 28, 1999. The four guards prayed for (1) payment of backwages, wage differentials, premium and overtime pay for holidays, and 13th month pay; (2) reimbursement of their cash bond; (3) reinstatement or separation pay; and (4) damages.

Blue Angel, for its part, denied the charges of illegal dismissal. It alleged that, on two occasions, the officer-in-charge (OIC) of the Security Force of NCBA, Reynaldo Dayag, reported that the four complaining guards had, while on guard duty detail with the school, committed several infractions, among them: insubordination, sleeping while on duty, and absence without leave (AWOL). When summoned to explain their side on the derogatory report, only Castillo, Ciriaco, and Garces, according to Blue Angel, showed up, but not Mercader who had since stopped reporting for work and thus considered on AWOL. Continuing, Blue Angel alleged that when told that they would be subjected to an investigation, Castillo, Ciriaco, and Garces pleaded that they be allowed to resign instead. The three, so

Blue Angel claimed, then tendered their *pro-forma* letters of resignation followed by handwritten resignation letters in the nature of quitclaims. To refute the guards' claims of non-payment of what was due them, Blue Angel presented the payrolls and vouchers from July 1997 to April 1999 that showed the four guards' respective gross salaries and deductions.

In a Decision[2] dated May 31, 2000, the labor arbiter, in part, found for the guards, Blue Angel being ordered to immediately reinstate them with backwages. The dispositive portion of the labor arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering Blue Angel Security and Manpower Services, Inc. to immediately reinstate the complainants to their former positions pursuant to the ruling in the Pioneer Texturing case that an order of reinstatement is self-executory even pending appeal.
>
> Respondent is hereby ordered to pay the backwages of the complainants tentatively computed as follows:
>
> Rommel Castillo ----------Php 82,971.00
> Wilson Ciriaco ---------- Php 86,139.00
> Gary Garces ----------Php 86,337.00
> Chesterfield Mercader ----------Php 82,971.00
>
> SO ORDERED.

Dissatisfied, Blue Angel, on one hand, and Castillo, *et al.*, on the other, interposed separate appeals to the NLRC, the former faulting the labor arbiter mainly for his finding that the four guards in question were illegally dismissed. The guards, for their part, took exception to the arbiter's holding that some items of their money claim had already been paid.

By the Decision dated May 9, 2001, the NLRC affirmed with modification that of the labor arbiter. The NLRC predicated its modificatory action on the finding that Castillo, Ciriaco, and Garces were not terminated from the service as they had indeed voluntarily resigned, and that only Mercader was illegally dismissed. In net effect, the NLRC ruled that, of the four

[2] *Id.* at 271-283.

complaining guards, only Mercader deserved to be reinstated with backwages as he was the only one dismissed illegally. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, in light of the foregoing, the appealed Decision is hereby AFFIRMED with the modification only in so far as the dismissal of the complaints filed by Romel Castillo, [Wilson] Ciriaco and Gary Garces; the judgment arrived at in the case of complainant Chesterfield Mercader is hereby Affirmed.
>
> All other reliefs herein sought and prayed for are DENIED for lack of merit.
>
> SO ORDERED.[3]

According to the NLRC, the two sets of letters of resignation, the *pro-forma* resignations and the handwritten resignations, were never disputed. Besides, the NLRC reasoned, the fact that the later resignation letters were handwritten in *Pilipino*, a dialect known to them, militated against the claims of Castillo, Ciriaco, and Garces that they were coerced and pressured to writing the letters.

On *certiorari* before the CA, the CA first noted that Blue Angel did not appeal the portion of the NLRC Decision affirming the labor arbiter's ruling that Mercader was illegally dismissed; hence, said portion of the decision of the labor arbiter became final and binding on Blue Angel.

Now to the case of Castillo, Ciriaco, and Garces. In its February 26, 2003 Decision, the CA found incredulous the claim of Blue Angel that the guards pleaded that they be allowed to resign and had voluntarily resigned after they were told that an investigation would ensue. The CA concluded that Blue Angel had illegally terminated Castillo, Ciriaco, and Garces. The *fallo* of its Decision reads:

> WHEREFORE, THE PETITION is hereby GRANTED. The decision of the National Labor Relations Commission dated May 9, 2001 is ANNULLED AND SET ASIDE except insofar as it sustained the labor arbiter's ruling that petitioner Chesterfield Mercader was

[3] *Id.* at 347-359.

illegally dismissed, with the result that the decision of the labor arbiter dated May 31, 2000 is reinstated.

SO ORDERED.

Now before us, petitioner Blue Angel raises that the CA committed palpable and reversible error of law in:

I.

x x x HOLDING THAT PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED.

II.

x x x IN NOT HOLDING THAT PRIVATE RESPONDENTS ARE NOT ENTITLED TO THEIR CLAIMS FOR BACKWAGES OR ANY OTHER MONETARY BENEFIT AS THEY HAVE ALREADY RECEIVED ALL THE SALARIES AND BENEFITS THAT THEY ARE ENTITLED TO.

It is to be stressed, as a preliminary consideration, that the illegality of Mercader's dismissal and his entitlement to reinstatement with backwages is now a settled issue, the NLRC's holding on that regard being conclusive on Blue Angel when it failed, as the CA aptly observed, to appeal that portion of the NLRC's decision. It is a settled rule that no questions will be entertained on appeal unless they have been raised below.[4] Accordingly, any disposition henceforth made herein bearing on the illegality of dismissal shall be limited only to the case of private respondents Castillo, Ciriaco, and Garces. When mention, therefore, is hereinafter made of private respondents or respondents-guards, the reference is to Castillo, Ciriaco and Garces only, unless the context indicates that it shall include Mercader.

The question of whether or not private respondents were illegally dismissed hinges on the determination of whether or not they freely and voluntarily resigned as shown by the two sets of resignation letters.

---

[4] *Multi-Realty Development Corporation v. Makati-Tuscany Condominium Corporation*, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23.

We rule that the resignations were involuntary and the termination of private respondents was illegal.

Blue Angel insists that the guards had pleaded to be allowed to resign when they were told of the pending investigation, and that they eventually tendered their *pro-forma* resignation letters followed by their own handwritten resignation letters. Our review of the circumstances surrounding these resignation letters does not support Blue Angel's contentions that these letters are indications that private respondents had voluntarily resigned. We agree with the labor arbiter when he pointed out that the undated, similarly worded resignation letters tended to show that the guards were made to copy the *pro-forma* letters, in their own hand, to make them appear more convincing that the guards had voluntarily resigned. As the labor arbiter noted, the element of voluntariness of the resignations is even more suspect considering that the second set of resignation letters were pre-drafted, similarly worded, and with blank spaces filled in with the effectivity dates of the resignations.[5] In their Comment, private respondents claimed being forced to sign and copy the *pro-forma* resignation letters and quitclaims on pain that they would not get their remaining compensations.[6]

We are more inclined to believe the dismissed guards. Other circumstances have been aptly pointed out by respondents-guards in their Comment that we are wont to agree that they were forced into a situation where to refuse to sign the resignation letters and quitclaims meant loss of money for the immediate and urgent basic needs of their family. To buttress the conclusion that the resignation letters were involuntary on the part of the guards, we find convincing the circumstances mentioned in the Comment of respondents-guards. For one, it seemed unlikely and improbable that Garces and Ciriaco would voluntarily resign on April 26, 1999 when they had 15 and 12 days earlier, or on April 11 and 12, 1999, already been terminated. Then again, it was likewise inconsistent and implausible that Castillo would

---

[5] *Rollo*, pp. 192-196.

[6] *Id*. at 540.

voluntarily tender his resignation and sign a quitclaim on April 28, 1999, when Mercader and he had in fact already filed a complaint against Blue Angel with the NLRC regarding illegal deductions of their salary eight days earlier, or on April 20, 1999.[7] Lastly, there is nothing on record showing that Blue Angel provided any proof that Castillo, Ciriaco, and Garces had indeed committed the infractions attributed to them. Blue Angel merely enumerated the offenses without providing particulars as to the date and place these infractions were committed. Neither did Blue Angel present written notices, warnings, and affidavits of the OIC to support its allegations against the guards.

We are not unaware that the execution of the resignation letters was undisputed, but the aforementioned circumstances of this case and the fact that private respondents filed a complaint for illegal dismissal from employment against Blue Angel completely negate the claim that private respondents voluntarily resigned.[8] Well-entrenched is the rule that resignation is inconsistent with the filing of a complaint for illegal dismissal.[9] To constitute resignation, the resignation must be unconditional with the intent to operate as such. There must be clear intention to relinquish the position. In this case, private respondents actively pursued their illegal dismissal case against Blue Angel such that they cannot be said to have voluntarily resigned from their jobs.

With the finding that private respondents were illegally dismissed, they are entitled to reinstatement to their positions without loss of their seniority rights and with full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time private respondents' compensation was withheld from them up to the time of their actual reinstatement as provided for in Article 279 of the Labor Code.

---

[7] *Id.* at 541.

[8] See *Amkor Technology Philippines, Inc. v. Juanco*, G.R. No. 166507, September 27, 2006, 503 SCRA 683.

[9] *Oriental Shipmanagement Co., Inc. v. Court of Appeals*, G.R. No. 153750, January 25, 2006, 480 SCRA 100, 110.

As the law now stands, illegally dismissed employees are entitled to two reliefs, namely: backwages and reinstatement. They are entitled to reinstatement, if viable, or separation pay, if reinstatement is no longer feasible, and backwages.[10] The award of one does not preclude the other as the Court had, in proper cases, ordered the payment of both.[11] Where an employee would have been entitled to reinstatement with full backwages, but circumstances, *i.e.*, strained relationships, make reinstatement impossible, the more equitable disposition would be to award separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, in addition to full backwages, inclusive of allowances, and benefits or their monetary equivalent, computed from the time the employee's compensation was withheld up to the time of the employee's actual reinstatement.[12]

As to the other money claims of private respondents, the vouchers,[13] payrolls,[14] and other documentary evidence[15] show that the other monetary benefits being claimed by private respondents have already been duly paid.

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Decision of the CA in CA-G.R. SP No. 67478 reinstating the Decision dated May 31, 2000 of the labor arbiter is *AFFIRMED* with the *MODIFICATION* that petitioner Blue Angel Security and Manpower Services, Inc. is ordered to reinstate complainants Romel Castillo, Wilson Ciriaco, and Gary Garces to their former positions without loss of seniority rights and other privileges and with full backwages, inclusive of allowances

---

[10] See *Triad Security & Allied Services, Inc. v. Ortega, Jr.*, G.R. No. 160871, February 6, 2006, 481 SCRA 591.

[11] *Id*.

[12] *Star Paper Corporation v. Espiritu*, G.R. No. 154006, November 2, 2006, 506 SCRA 556, 567.

[13] *Rollo*, pp. 212-215.

[14] *Id*. at 140-191.

[15] *Id*. at 226-228.

and other benefits or their monetary equivalent computed from the time their compensations were withheld from them up to the time of their actual reinstatements. In the event reinstatement is not feasible, they shall be paid separation pay in the amount equivalent to at least one month pay or one month pay for every year of service whichever is higher.

With respect to Chesterfield Mercader, the NLRC Decision dated May 9, 2001, affirming the labor arbiter's Decision dated May 31, 2000 which ordered petitioner to reinstate him to his former position and pay him backwages of PhP 82,971, had become final on November 2, 2001, in the absence of an appeal thereon to the CA.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162837. July 28, 2008]

MARLENE L. RODRIN, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM, PHILIPPINE NATIONAL POLICE, EMPLOYEES' COMPENSATION COMMISSION,**[*] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; AMENDED RULES ON EMPLOYEES' COMPENSATION

---

[*] Additional member as per Special Order 509 dated July 1, 2008.

[*] The Court of Appeals, having been included as a co-respondent, is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

COMMISSION; COMPENSABILITY OF AN INJURY; CONDITIONS. — For the compensability of an injury to an employee which results in his disability or death, Section 1(a), Rule III of the Amended Rules on Employees' Compensation imposes the following conditions: 1. The employee must have been injured at the place where his work required him to be; 2. The employee must have been performing his official functions; and 3. If the injury was sustained elsewhere, the employee must have been executing an order of the employer.

2. REMEDIAL LAW; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; LIMITED TO REVIEWING ERRORS OF LAW, NOT OF FACT; EXCEPTIONS.— The settled rule is that jurisdiction of this Court over petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. However, there are recognized exceptions to this rule, to wit: **(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible;** (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; **(8) when the findings are conclusions without citation of specific evidence on which they are based;** (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. The Court finds that the present case falls under the first, second and eighth exceptions.

3. ID.; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED IS SATISFACTORY UNLESS CONTROVERTED; CASE AT BAR. — It is clear from the Letter-Orders dated July 10, 2000, issued by SPO1 Rodrin's superior, Police Superintendent Danilo B. Castro, the Chief

of Police of Silang, that SPO1 Rodrin was directed to proceed to Carmona, Cavite and Biñan, Laguna between July 10, 2000 and July 20, 2000 for the purpose of conducting monitoring, surveillance and, if possible, arrest of the persons named therein. Being specifically assigned to conduct intelligence work in Carmona and Biñan, SPO1 Rodrin is presumed to have been performing his official duty when he was shot to death by a security guard while trying to pass through the Las Villas de Manila subdivision in Brgy. San Francisco, Biñan, Laguna. Section 3(m), Rule 131 of the Rules of Court provides the presumption that official duty has been regularly performed. The said Rule treats this presumption as satisfactory unless contradicted and overcome by other evidence.

4. ID.; ID.; ID.; ID.; THE NATURE OF WORK OF A POLICE OFFICER WHO IS AN INTELLIGENCE OPERATIVE DOES NOT CONFINE HIM TO SPECIFIC PLACES AND HOURS, MORE SO IF THE POLICE OFFICER IS INVOLVED IN INTELLIGENCE WORK; CASE AT BAR. — With respect to the contention that San Pedro, Laguna was a place which was not covered by the subject Letter-Orders, the Court takes cognizance of the fact that the nature of work of a police officer who is an intelligence operative does not confine him to specific places and hours, more so with respect to a police officer involved in intelligence work. His actions may not be compartmentalized, as they depend to a large extent on the exigencies of the assignment given him. In the present case, the fact that the Letter-Orders indicated the possible location of the criminal suspects he was tasked to apprehend does not limit the conduct of his operation within the boundaries of these places. He was not prevented from immediately going to other locations if he had gathered information that these criminal elements were in said places. Hence, to conclude that SPO1 Rodrin was not in the performance of his official duty simply because, at the time of his death, he was then on his way to a place which was not specified in the subject Letter-Orders is absolutely erroneous. In the absence of sufficient evidence to prove otherwise, the presumption that SPO1 Rodrin was in the regular performance of his official duty when he was killed remains.

5. LABOR AND SOCIAL LEGISLATION; IN CASE OF DOUBT, THE LAW ON SOCIAL SECURITY IS LIBERALLY

CONSTRUED IN FAVOR OF BENEFICIARIES OF POLICE OFFICERS. — It is well to echo the Court's ruling in *Employees' Compensation Commission v. Court of Appeals*, wherein it was held that: x x x in case of doubt, the sympathy of the law on social security is toward its beneficiaries, and the law, by its own terms, requires a construction of utmost liberality in their favor. For this reason, this Court lends a very sympathetic ear to the cries of the poor widows and orphans of police officers. If we must demand — as we ought to — strict accountability from our policemen in safeguarding peace and order day and night, we must also to the same extent be ready to compensate their loved ones who, by their untimely death, are left without any means of supporting themselves.

APPEARANCES OF COUNSEL

Franco L. Loyola for petitioner.
Chief Legal Counsel (GSIS) 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 seeking to set aside the November 25, 2003 Decision[1] and March 22, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 70589.

The antecedents of the case, as summarized by the CA, are as follows:

On October 23, 2000, petitioner Marlene L. Rodrin filed a claim for compensation benefits under Presidential Decree 626, as amended, relative to the death of her husband SPO1 Felixberto M. Rodrin before the GSIS. To bolster her claim, she submitted the following documents:

---

[1] Penned by Justice Eloy R. Bello, Jr. with the concurrence of Justices Amelita G. Tolentino and Arturo D. Brion (now a member of this Court), *rollo*, p. 19.

[2] CA *rollo*, p. 235.

1) the Line of Duty Status of the late SPO1 Felixberto M. Rodrin wherein it was declared that: SPO1 Felixberto M. Rodrin, member of Silang Municipal Police Station, Silang, Cavite and assigned as Intel Operatives was killed on or about 142130 July 2000 at Las Villas Subdivision, Biñan, Laguna while performing his assigned task; that the death of SPO1 Felixberto M. Rodrin, member [sic] this station is in line of duty on the following grounds: that subject PNCO is presently assigned at Silang Municipal Police Station, Silang, Cavite and was performing Intel operation during his death; and that the subject PNP [Philippine National Police] member was on actual performance of his assigned duty when he was killed. **(*rollo* p. 49)**;

2) the Sinumpaang Salaysay of both Jhoanne Rodrin, daughter of the deceased and petitioner wherein they stated that the deceased informed them that he was going to Biñan to arrest a certain "wanted" person;

3) the Investigation Report dated July 17, 2000. The pertinent portion of the findings of which reads as follows:

> "Brothers Anolito Loyola *y* Maulanin, 45 years old, and Cesar Loyola *y* Maulanin, 36 years old executed their respective corroborative sworn statements to this case. Accordingly, OOA 142100H July 2000 they were driving their respective cars with SPO1 Felixberto Rodrin, their brother-in-law, riding in Cesar Loyola's car. From Carmona, Cavite intending to go to Pacita Complex, San Pedro, Laguna they decided to pass through Las Villas de Manila, Brgy San Francisco, Biñan, Laguna. At gate II, they were allegedly permitted to enter by the duty security guards identified as ERIC MENDOZA *Y* CARDENAS, 26 years old and ROGELIO TAGANAP *Y* DAMASO, 26 years old, upon a favor given to SPO1 Felixberto Rodrin. However, they were stopped on their exit at gate 1 by the security guards whose service shot guns were pointed toward their two cars, as follows: VENUSTO DIWA *Y* (sic) DEDIL, 50 years old, RODOLFO CREDO *Y* DAMASO, 21 years old, and one *alias* ALLAN VISTO. The Situation prompted SPO1 Felixberto Rodrin to alight from the car and approached Rodolfo Credo. They were then asked by the security guards why they persisted to enter gate II, despite the refusal of the guard. At this juncture, while they were engaged in a heated altercation, Rodolfo Credo shot SPO1 Felixberto Rodrin with a shot gun, hitting the latter on the left part of the body thereby causing his instantaneous death.

> Instinctively, Cesar Loyola attempted to alight in his driven car to help SPO1 Rodrin but he was prevented by *alias* Allan Visto from doing so by uttering the following words, "*PUTANG INA MO! KAPAG BUMABA KA PA NG KOTSE AY PAPATAYIN KA RIN NAMIN*!" Following thereto, Allan Visto squeezed the trigger of his shotgun but it failed to fire. On the other hand, right after SPO1 Rodin was shot, Anolito Loyola was able to grab the shot gun of Venusto Diwa." **(*rollo* p. 54)**

4) Certification by Police Supt. Danilo B. Castro attesting that the late SPO1 Rodrin was assigned as Intel Operatives.

In a letter dated December 20, 2000, the Government Service Insurance System denied petitioner's claim for compensation benefits under Presidential Decree 626, as amended, on the ground that the death of SPO1 Felixberto M. Rodrin did not arise out nor was it in the course of his employment.

Upon appeal to the ECC, the Commission affirmed the decision of the GSIS. The pertinent portion of which reads as follows:

> "It is respectfully submitted that the death of the deceased was not the result of employment accident. To say that death among policemen is always compensable as long as they are on active duty, even if the cause of death is not in any way connected to their official functions, would be unfair and in danger of being abused. In the absence, therefore, of any proof that would link the death of the deceased with his employment, the claim for death benefits cannot be given due course." **(*rollo* p. 19)**[3]

Petitioner then filed a Petition for Review[4] with the CA assailing the decision of the Employees' Compensation Commission (ECC).

On November 25, 2003, the CA promulgated the presently assailed Decision which dismissed the Petition for Review.

Petitioner filed a Motion for Reconsideration[5] but the CA denied it in its Resolution[6] of March 22, 2004.

---

[3] CA *rollo*, pp. 192-194.

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

[5] *Id*. at 202.

[6] *Id*. at 235.

Hence, the instant petition raising the basic issue of whether the death of Senior Police Officer (SPO) 1 Rodrin is compensable under the provisions of Presidential Decree (P.D.) No. 626[7] as amended.

Petitioner's basic contention is that the Government Service Insurance System (GSIS) erred in denying petitioner's claim for compensation for the death of her husband, considering that she was able to submit various documents evidencing that SPO1 Rodrin died in the line of duty or that his death arose from or happened during the course of his employment.

Petitioner avers that this Court has ruled that P.D. No. 626 should be liberally interpreted in favor of the employee because it is basically a social legislation designed to afford relief to the working men and women in society.

GSIS, on the other hand, argues that the issue raised by petitioner entails a factual determination of the circumstances surrounding the death of SPO1 Rodrin. It contends that there is a unanimous finding on the part of GSIS, ECC and the CA that SPO1 Rodrin was not in the performance of his official duty when he got killed.

GSIS also asserts that the present petition is *pro forma,* as it does not present anything new but merely reiterates the previous allegations and arguments which were already passed upon and rejected by the CA.

GSIS avers that while it commiserates with petitioner for the loss of her husband and the father of their children, the fact remains that the circumstances surrounding SPO1 Rodrin's death does not entitle petitioner to benefits under P.D. No. 626 and under current jurisprudence which calls for the protection of the financially strapped State Insurance Fund against non-deserving claims.

On its part, the Office of the Solicitor General (OSG) contends that petitioner failed to prove that her husband died while

[7] Entitled, "Further Amending Certain Articles of Presidential Decree No. 442 Entitled 'Labor Code of the Philippines.'"

performing official functions and that he was executing an order from his employer.

The OSG avers that the report dated August 9, 2000 of the Board of Officers of the Philippine National Police (PNP), Silang Cavite stating that SPO1 Rodrin died in the line of duty cannot be considered competent evidence to establish that the said policeman indeed died while performing an official duty. The OSG claims that the report was merely based on the sworn statements of petitioner and of their daughter wherein the allegations therein are mere hearsay and inadmissible in evidence considering that SPO1 Rodrin allegedly informed them that he was going to Biñan to arrest a person wanted by law.

The OSG also questions the veracity of the mission order dated July 10, 2000 issued by the Chief of Police of Silang, Cavite which supposedly required SPO1 Rodrin to go to Carmona, Cavite and Biñan, Laguna to conduct surveillance and monitoring activities and, if possible, arrest the persons named in said order. The OSG claims that there was no evidence to show that the Chief of Police of Silang notified or coordinated with the highest PNP or military commander in the area where the mission was to be accomplished in accordance with the policy of the PNP as contained in Circular No. 2000-016 dated December 11, 2000. The OSG concludes that the mission order was issued as an afterthought simply to support petitioner's claim for her husband's death.

The OSG further contends that the failure of the Biñan Police to state in their Report dated July 17, 2001 that SPO1 Rodrin was on official mission when he was killed puts in serious doubt petitioner's claim that her husband was killed in the line of duty. Moreover, the OSG avers that there is also nothing in the statements of the brothers-in-law of SPO1 Rodrin, who were his companions at the time that he was gunned down, that he was then on official mission. In fact, the said brothers-in-law simply asserted that they were going to Pacita Complex, San Pedro, Laguna.

Furthermore, the OSG avers that the private character of the business of SPO1 Rodrin at the time of his death is also

proven by the fact that his companions were not members of any law enforcement agency.

The Court finds the petition meritorious.

For the compensability of an injury to an employee which results in his disability or death, Section 1(a), Rule III of the Amended Rules on Employees' Compensation imposes the following conditions:

1. The employee must have been injured at the place where his work required him to be;

2. The employee must have been performing his official functions; and

3. If the injury was sustained elsewhere, the employee must have been executing an order of the employer.

The first condition has been met by petitioner. The GSIS and the ECC as well as the CA accepted the claim that SPO1 Rodrin may have been in the line of duty or on a surveillance mission at the time and place of his shooting.[8] The ECC conceded that there was no question that SPO1 Rodrin was a member of the PNP at the time of his death; and that being so, he was considered to be at his place of work regardless of whether or not he was "on or off-duty."[9] Both assertions are correctly based on this Court's ruling in *Government Service Insurance System v. Court of Appeals*[10] that members of the national police, unless they are on official leave, are, by the nature of their functions, technically on duty 24 hours a day, because policemen are subject to call at any time and may be asked by their superiors or by any distressed citizen to assist in maintaining the peace and security of the community.

Anent the second and third conditions, the GSIS, ECC and the CA found that SPO1 Rodrin, at the time of his death, was

---

[8] Memorandum (for respondent GSIS), *rollo*, p. 209.

[9] Comment, *id.* at 152.

[10] G.R. No. 128524, April 20, 1999, 306 SCRA 41, 45.

not in the performance of his official duties pursuant to an official order from his superior.

The settled rule is that jurisdiction of this Court over petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. However, there are recognized exceptions to this rule, to wit: **(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible;** (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; **(8) when the findings are conclusions without citation of specific evidence on which they are based;** (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[11] The Court finds that the present case falls under the first, second and eighth exceptions.

The GSIS and the ECC concluded that the death of SPO1 Rodrin is not compensable under the provisions of P.D. No. 626 as his death did not arise from, nor was it in the course of, his employment. However, both the GSIS and the ECC did not elaborate on how they arrived at such a conclusion. On the other hand, the CA itself found that petitioner sufficiently established that her husband was on a mission and was conducting surveillance when he was killed; but, nonetheless, the CA concluded that SPO1 Rodrin was not performing his official

---

[11] *Rubio v. Munar, Jr.*, G.R. No. 155952, October 4, 2007, 534 SCRA 597, 602-603.

functions nor was he executing an order for his employer at the time of his death, thus:

> The doctrine enunciated in the cases of Hinoguin and Nitura cannot be made applicable in the case at bar. While it is true that petitioner sufficiently established that he was on mission and conducting intel surveillance of accused Gary Panopio and Elpedio Panopio, the other requirements for death to be compensable are wanting. SPO1 Rodrin was not performing his official functions nor was he executing an order for the employer at the time of his death. Upon examination of the records, what was only clearly established was that SPO1 Rodrin died as a result of their attempt to pass through the Las Villas Subdivision in Biñan, Laguna and that there was a heated altercation between petitioner's husband and the security guard of the said subdivision. As correctly averred by the Office of the Solicitor General, there was no proof directly linking the death of SPO1 Rodrin to the performance of his official duty.[12]

It is clear from the Letter-Orders[13] dated July 10, 2000, issued by SPO1 Rodrin's superior, Police Superintendent Danilo B. Castro, the Chief of Police of Silang, that SPO1 Rodrin was directed to proceed to Carmona, Cavite and Biñan, Laguna between July 10, 2000 and July 20, 2000 for the purpose of conducting monitoring, surveillance and, if possible, arrest of the persons named therein. Being specifically assigned to conduct intelligence work in Carmona and Biñan, SPO1 Rodrin is presumed to have been performing his official duty when he was shot to death by a security guard while trying to pass through the Las Villas de Manila subdivision in Brgy. San Francisco, Biñan, Laguna.[14]

Section 3(m), Rule 131 of the Rules of Court provides the presumption that official duty has been regularly performed. The said Rule treats this presumption as satisfactory unless contradicted and overcome by other evidence.

---

[12] CA *rollo*, p. 195.

[13] *Rollo*, p. 62.

[14] *Id*. At 91.

The Court is not persuaded by the contention of the OSG and the GSIS that SPO1 Rodrin's reason or reasons for intending to go to San Pedro, Laguna involved a purely private matter, as this is pure speculation. There is nothing in the *Kusang Loob na Salaysay*[15] of his brothers-in-law to indicate that their business in going to San Pedro was not related to SPO1 Rodrin's work as an intelligence officer. It should be noted that, at the time of his death, he came from Carmona, Cavite which is a place specified in the subject Letter-Orders. Moreover, he was killed in Biñan, which is also a place specified in the said Letter-Orders. Furthermore, he was killed on July 14, 2000 which is within the period authorized by the subject Letter-Orders for him to conduct surveillance, monitoring and arrest. Other than the fact the SPO1 Rodrin had intended to go to San Pedro, Laguna, a place which is not covered by his Letter-Orders, there is no basis to conclude that SPO1 Rodrin's business in going to San Pedro was private in nature and was not related to his job as an intelligence officer of the PNP. Intelligence work covers a broad spectrum of activities that, more often than not, would necessarily involve secret plans or unexpected courses of action to attain its objectives.

Moreover, simply because SPO1 Rodrin was in the company of his brothers-in-law who are not members of any law enforcement agency does not establish that the business of SPO1 Rodrin at the time of his death was purely private in character. It should be noted that the GSIS itself, in its letter to petitioner dated December 20, 2000,[16] found that SPO1 Rodrin sought the assistance of his brother-in-law Cesar Loyola in meeting a potential "asset" who could give information on a drug syndicate operating in the area.

With respect to the contention that San Pedro, Laguna was a place which was not covered by the subject Letter-Orders, the Court takes cognizance of the fact that the nature of work of a police officer who is an intelligence operative[17] does not

---

[15] Annexes "B" and "C" to Comment of the OSG, *rollo*, pp. 177-178.

[16] Annex "D" to Petition, *rollo*, p. 27.

[17] Certification of Police Supt. Danilo B. Castro, *id*. at 102.

confine him to specific places and hours, more so with respect to a police officer involved in intelligence work. His actions may not be compartmentalized, as they depend to a large extent on the exigencies of the assignment given him. In the present case, the fact that the Letter-Orders indicated the possible location of the criminal suspects he was tasked to apprehend does not limit the conduct of his operation within the boundaries of these places. He was not prevented from immediately going to other locations if he had gathered information that these criminal elements were in said places. Hence, to conclude that SPO1 Rodrin was not in the performance of his official duty simply because, at the time of his death, he was then on his way to a place which was not specified in the subject Letter-Orders is absolutely erroneous. In the absence of sufficient evidence to prove otherwise, the presumption that SPO1 Rodrin was in the regular performance of his official duty when he was killed remains.

In addition, respondents, including the CA, dwelt on speculations and surmises when they concluded that SPO1 Rodrin was not performing his official functions when he was shot. The fact that the Biñan Police failed to state in their Investigation Report[18] dated July 17, 2000 that SPO1 Rodrin was on official mission when he was killed does not militate against the claim of herein petitioner. The Investigation Report of the Biñan Police focused only on the shooting incident and the circumstances surrounding the death of SPO1 Rodrin. The absence of any statement or indication which shows that SPO1 Rodrin was then on official mission does not mean that he, in fact, was not in the course of performing his duties as outlined in the subject Letter-Orders.

Respondents cite *Government Service Insurance System v. Court of Appeals*,[19] in arguing that SPO1 Rodrin's death is not compensable. However, the factual circumstances of the said case are not the same as the present one before the Court. In

---

[18] Annex "M" to Petition, *rollo*, p. 99.

[19] G.R. No. 128524, April 20, 1999, 306 SCRA 41.

GSIS, the police officer was shot to death while he was driving his tricycle and ferrying passengers for a fee. The Court, in denying the grant of death compensation benefits to the widow of the slain policeman, ruled that the latter did not meet the requirements set forth in the ECC guidelines, as it was obvious that the matter he was attending to when he was killed, that of ferrying passengers for a fee, was intrinsically private and unofficial in nature. In other words, in said case, evidence clearly shows that at the time of his death the police officer was performing acts which could not in any way be considered as police service in character. The same may not be said in the present case. There is no evidence to prove the claims of respondents that the matter SPO1 Rodrin was attending to when he was shot to death was intrinsically private and unofficial in nature. The fact remains that he died at a place and within the time specified in his Letter-Orders. Thus, in the absence of contrary evidence, PO1 Rodrin is presumed to be in the performance of his official duties at the time of his death.

The argument that the cause of SPO1 Rodrin's death was not in any way related to his mission as outlined in the subject Letter-Orders is not plausible.

In *Employees' Compensation Commission v. Court of Appeals*,[20] a police officer who was a member of the Mandaluyong Police Station and assigned to the Pasig Provincial Jail brought his son to the Mandaluyong Police Station for interview, because the latter was involved in a stabbing incident. While in front of the said station, the policeman was approached by another policeman and shot him to death. The claim for death compensation benefits by the widow of the slain police officer was denied by the GSIS and the ECC on the ground, among others, that he was plainly acting as a father to his son. However, the CA reversed the denial. In sustaining the CA reversal, this Court declared that in bringing his son to the police station for questioning to shed light on a stabbing incident, he was not merely acting as a father but as a peace officer. In the present

[20] G.R. No. 115858, June 28, 1996, 257 SCRA 717.

case, evidence shows that, at the time that SPO1 Rodrin was gunned down, he was performing his duty as a police officer. The Investigation Report of the Biñan PNP as well as the *Kusang Loob na Salaysay* of both the brothers-in-law of SPO1 Rodrin show that when the latter was shot to death he was in the course of inquiring why the security guards of the subdivision they were passing through were aiming their guns at them. At that point, it cannot be denied that he was caught in a situation where he could not avoid exercising his authority and duty as policeman to maintain peace and security of the community. While his main mission was to apprehend certain criminal elements named in the subject Letter-Orders, he was not excused from performing his basic function as a peace officer. His act of trying to find out the reason why the security guards were acting hostile cannot be said to be foreign and unrelated to his job as a member of the police force.

Finally it is well to echo the Court's ruling in *Employees' Compensation Commission v. Court of Appeals*,[21] wherein it was held that:

> x x x in case of doubt, the sympathy of the law on social security is toward its beneficiaries, and the law, by its own terms, requires a construction of utmost liberality in their favor. For this reason, this Court lends a very sympathetic ear to the cries of the poor widows and orphans of police officers. If we must demand — as we ought to — strict accountability from our policemen in safeguarding peace and order day and night, we must also to the same extent be ready to compensate their loved ones who, by their untimely death, are left without any means of supporting themselves.[22]

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated November 25, 2003, its Resolution of March 22, 2004 and the Decision of the Employees' Compensation Commission dated February 28, 2002 are *REVERSED* and *SET ASIDE*. A new Decision is hereby entered

---

[21] *Id*.

[22] *Id*. at 726, citing *Vicente v. Employees' Compensation Commission*, G.R. No. 85024, January 23, 1991, 193 SCRA 190.

declaring petitioner entitled to compensation benefits under P.D. No. 626, as amended. Respondent GSIS is hereby *ORDERED* to accordingly *AWARD* the petitioner the benefits under the said law.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165952. July 28, 2008]

ANECO REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **LANDEX DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES OF PROCEDURE ARE MERE TOOLS DESIGNED TO FACILITATE THE ATTAINMENT OF JUSTICE; THEIR STRICT AND RIGID APPLICATION SHOULD BE RELAXED WHEN THEY HINDER RATHER THAN PROMOTE SUBSTANTIAL JUSTICE. — Nonetheless, it is also true that procedural rules are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Public policy dictates that court cases should, as much as possible, be resolved on the merits not on mere technicalities. Substantive justice trumps procedural rules. In *Barnes v. Padilla*, this Court held: Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that

tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final x x x. The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.

2. ID.; ID.; ID.; REQUIREMENT OF A NOTICE OF HEARING IN EVERY CONTESTED MOTION IS PART OF DUE PROCESS OF LAW; WHAT THE LAW PROHIBITS IS NOT THE ABSENCE OF PREVIOUS NOTICE, BUT THE ABSOLUTE ABSENCE THEREOF AND LACK OF OPPORTUNITY TO BE HEARD. — [T]he requirement of a notice of hearing in every contested motion is part of due process of law. The notice alerts the opposing party of a pending motion in court and gives him an opportunity to oppose it. What the rule forbids is not the mere absence of a notice of hearing in a contested motion but the unfair surprise caused by the lack of notice. It is the dire consequences which flow from the procedural error which is proscribed. If the opposing party is given a sufficient opportunity to oppose a defective motion, the procedural lapse is deemed cured and the intent of the rule is substantially complied. In *E & L Mercantile, Inc. v. Intermediate Appellate Court*, this Court held: x x x The rule in *De Borja v. Tan* (93 Phil. 167), that "what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard," is the applicable doctrine. x x x

3. CIVIL LAW; PROPERTY; OWNERSHIP; RIGHT TO FENCE FLOWS FROM RIGHT OF OWNERSHIP. — Article 430 of the Civil Code gives every owner the right to enclose or fence his land or tenement by means of walls, ditches, hedges or any other means. The right to fence flows from the right of ownership. As owner of the land, Landex may fence his property subject only to the limitations and restrictions provided by law. Absent a clear legal and enforceable right, as here, We will not interfere with the exercise of an essential attribute of ownership.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS AND CONCLUSIONS OF LAW OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS ARE ACCORDED GREAT WEIGHT AND RESPECT. — Well-settled is the rule that factual findings and conclusions of law of the trial court when affirmed by the CA are accorded great weight and respect. Here, We find no cogent reason to deviate from the factual findings and conclusion of law of the trial court and the appellate court. We have meticulously reviewed the records and agree that Aneco failed to prove any clear legal right to prevent, much less restrain, Landex from fencing its own property.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices and *Inocentes Lacuanan & Associates Law Office* for petitioner.

Edito A. Rodriguez and *Polido & Anchuvas Law Offices* for respondent.

D E C I S I O N

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

THIS is a simple case of a neighbor seeking to restrain the landowner from fencing his own property. The right to fence flows from the right of ownership. Absent a clear legal and enforceable right, We will not unduly restrain the landowner from exercising an inherent proprietary right.

Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) affirming the Order[2] of the Regional Trial Court (RTC) dismissing the complaint for injunction filed by petitioner Aneco Realty and Development Corporation (Aneco) against respondent Landex Development Corporation (Landex).

---

[1] *Rollo*, pp. 56-65. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring.

[2] *Id*. at 75-76.

Facts

Fernandez Hermanos Development, Inc. (FHDI) is the original owner of a tract of land in San Francisco Del Monte, Quezon City. FHDI subdivided the land into thirty-nine (39) lots.[3] It later sold twenty-two (22) lots to petitioner Aneco and the remaining seventeen (17) lots to respondent Landex.[4]

The dispute arose when Landex started the construction of a concrete wall on one of its lots. To restrain construction of the wall, Aneco filed a complaint for injunction[5] with the RTC in Quezon City. Aneco later filed two (2) supplemental complaints seeking to demolish the newly-built wall and to hold Landex liable for two million pesos in damages.[6]

Landex filed its Answer[7] alleging, among others, that Aneco was not deprived access to its lots due to the construction of the concrete wall. Landex claimed that Aneco has its own entrance to its property along Miller Street, Resthaven Street, and San Francisco del Monte Street. The Resthaven access, however, was rendered inaccessible when Aneco constructed a building on said street. Landex also claimed that FHDI sold ordinary lots, not subdivision lots, to Aneco based on the express stipulation in the deed of sale that FHDI was not interested in pursuing its own subdivision project.

RTC Disposition

On June 19, 1996, the RTC rendered a Decision[8] granting the complaint for injunction, disposing as follows:

Wherefore, premises considered, and in the light aforecited decision of the Supreme Court judgment is hereby rendered in favor of the plaintiff and the defendant is hereby ordered:

---

[3] *Id.* at 321.

[4] *Id.* at 57.

[5] Records, pp. 1-31.

[6] *Rollo,* p. 58.

[7] Records, pp. 51-82.

[8] *Id.* at 194-199. Penned by Judge Demetrio B. Macapagal, Sr.

1. To stop the completion of the concrete wall and excavation of the road lot in question and if the same is already completed, to remove the same and to return the lot to its original situation;
2. To pay actual and compensatory damage to the plaintiff in the total amount of ₱50,000.00;
3. To pay attorney's fees in the amount of ₱20,000.00;
4. To pay the cost.

SO ORDERED.[9]

Landex moved for reconsideration.[10] Records reveal that Landex failed to include a notice of hearing in its motion for reconsideration as required under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. Realizing the defect, Landex later filed a motion[11] setting a hearing for its motion for reconsideration. Aneco countered with a motion for execution[12] claiming that the RTC decision is already final and executory.

Acting on the motion of Landex, the RTC set a hearing on the motion for reconsideration on August 28, 1996. Aneco failed to attend the slated hearing. The RTC gave Aneco additional time to file a comment on the motion for reconsideration.[13]

On March 13, 1997, the RTC issued an order[14] denying the motion for execution of Aneco.

On March 31, 1997, the RTC issued an order granting the motion for reconsideration of Landex and dismissing the complaint of Aneco. In granting reconsideration, the RTC stated:

In previously ruling for the plaintiff, this Court anchored its decision on the ruling of the Supreme Court in the case of "*White Plains*

[9] *Id*. at 199.

[10] *Id*. at 269-276.

[11] *Id*. at 277-278.

[12] *Id*. at 284-288.

[13] *Rollo,* p. 62.

[14] Records, p. 306.

Association vs. Legaspi, 193 SCRA 765," wherein the issue involved was the ownership of a road lot, in an existing, fully developed and authorized subdivision, which after a second look, is apparently inapplicable to the instant case at bar, simply because the property in question never did exist as a subdivision. Since, the property in question never did exist as a subdivision, the limitations imposed by Section 1 of Republic Act No. 440, that no portion of a subdivision road lot shall be closed without the approval of the Court is clearly in appropriate to the case at bar.

The records show that the plaintiff's property has access to a public road as it has its own ingress and egress along Miller St.; That plaintiff's property is not isolated as it is bounded by Miller St. and Resthaven St. in San Francisco del Monte, Quezon City; that plaintiff could easily make an access to a public road within the bounds and limits of its own property; and that the defendant has not yet been indemnified whatsoever for the use of his property, as mandated by the Bill of rights. The foregoing circumstances, negates the alleged plaintiffs right of way.[15]

Aneco appealed to the CA.[16]

CA Disposition

On March 31, 2003, the CA rendered a Decision[17] affirming the RTC order, disposing as follows:

WHEREFORE, in consideration of the foregoing, the instant appeal is perforce *dismissed*. Accordingly, the order dated 31 March 1996 is hereby *affirmed*.

SO ORDERED.[18]

In affirming the RTC dismissal of the complaint for injunction, the CA held that Aneco knew at the time of the sale that the lots sold by FHDI were not subdivision units based on the express stipulation in the deed of sale that FHDI, the seller, was no longer interested in pursuing its subdivision project, thus:

---

[15] *Id*. at 307-308.

[16] *Id*. at 309.

[17] *Rollo*, pp. 56-65.

[18] *Id*. at 64.

The subject property ceased to be a road lot when its former owner (Fernandez Hermanos, Inc.) sold it to appellant Aneco not as subdivision lots and without the intention of pursuing the subdivision project. The law in point is Article 624 of the New Civil Code, which provides:

> Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.

Viewed from the aforesaid law, there is no question that the law allows the continued use of an apparent easement should the owner alienate the property to different persons. It is noteworthy to emphasize that the lot in question was provided by the previous owner (Fernandez Hermanos, Inc.) as a *road lot* because of its intention to convert it into a *subdivision project*. The previous owner even applied for a development permit over the subject property. However, when the twenty-two (22) lots were sold to appellant Aneco, it was very clear from the seller's deed of sale that the lots sold *ceased to be subdivision lots*. The seller even warranted that it shall undertake to extend all the necessary assistance for the *consolidation of the subdivided lots*, including the execution of the requisite manifestation before the appropriate government agencies that the *seller is no longer interested in pursuing the subdivision project*. In fine, appellant Aneco knew from the very start that at the time of the sale, the 22 lots sold to it were not intended as subdivision units, although the titles to the different lots have yet to be consolidated. Consequently, the easement that used to exist on the subject lot ceased when appellant Aneco and the former owner agreed that the lots would be consolidated and would no longer be intended as a subdivision project.

Appellant Aneco insists that it has the intention of continuing the subdivision project earlier commenced by the former owner. It also holds on to the previous development permit granted to Fernandez Hermanos, Inc. The insistence is futile. Appellant Aneco did not acquire any right from the said previous owner since the latter itself

expressly stated in their agreement that it has no more intention of continuing the subdivision project. If appellant desires to convert its property into a subdivision project, it has to apply in its own name, and must have its own provisions for a road lot.[19]

Anent the issue of compulsory easement of right of way, the CA held that Aneco failed to prove the essential requisites to avail of such right, thus:

> An easement involves an abnormal restriction on the property of the servient owner and is regarded as a charge or encumbrance on the servient owner and is regarded as a charge or encumbrance on the servient estate (*Cristobal v. CA,* 291 SCRA 122). The essential requisites to be entitled to a compulsory easement of way are: 1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; 2) that proper indemnity has been paid; 3) that the isolation was not due to acts of the proprietor of the dominant estate; 4) that the right of way claimed is at a point least prejudicial to the servient estate and in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (*Cristobal v. Court of Appeals,* 291 SCRA 122).
>
> An in depth examination of the evidence adduced and offered by appellant Aneco, showed that it had failed to prove the existence of the aforementioned requisites, as the burden thereof lies upon the appellant Aneco.[20]

Aneco moved for reconsideration but its motion was denied.[21] Hence, the present petition or appeal by *certiorari* under Rule 45.

Issues

Petitioner Aneco assigns quadruple errors to the CA in the following tenor:

A.

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING PETITIONER'S APPEAL AND SUSTAINING THE TRIAL COURT'S

---

[19] *Id*. at 62-64.

[20] *Id*. at 64.

[21] *Id*. at 27.

ORDER DATED 31 MARCH 1997 GRANTING RESPONDENT'S *MOTION FOR RECONSIDERATION* WHICH IS FATALLY DEFECTIVE FOR LACK OF NOTICE OF HEARING.

B.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S *ORDER* WHICH GAVE FULL WEIGHT AND CREDIT TO THE MISLEADING AND ERRONEOUS CERTIFICATION ISSUED BY GILDA E. ESTILO WHICH SHE LATER EXPRESSLY AND CATEGORICALLY RECANTED BY WAY OF HER *AFFIDAVIT*.

C.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE LIBERAL CONSTRUCTION OF THE RULES IN ORDER TO SUSTAIN THE TRIAL COURT'S *ORDER* DATED 31 MARCH 1997.

D.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S *ORDER* THAT MADE NO PRONOUNCEMENTS AS TO COSTS, AND IN DISREGARDING THE MERIT OF THE PETITIONER'S CAUSE OF ACTION.[22]

Our Ruling

The petition is without merit.

Essentially, two (2) issues are raised in this petition. The first is the procedural issue of whether or not the RTC and the CA erred in liberally applying the rule on notice of hearing under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. The second is the substantive issue of whether or not Aneco may enjoin Landex from constructing a concrete wall on its own property.

We shall discuss the twin issues sequentially.

Strict vs. Liberal Construction of Procedural Rules; Defective motion was cured when Aneco was given an opportunity to comment on the motion for reconsideration.

[22] *Id*. at 28.

Section 5, Rule 15 of the 1997 Rules of Civil Procedure[23] requires a notice of hearing for a contested motion filed in court. Records disclose that the motion for reconsideration filed by Landex of the RTC decision did not contain a notice of hearing. There is no dispute that the motion for reconsideration is defective. The RTC and the CA ignored the procedural defect and ruled on the substantive issues raised by Landex in its motion for reconsideration. The issue before Us is whether or not the RTC and the CA correctly exercised its discretion in ignoring the procedural defect. Simply put, the issue is whether or not the requirement of notice of hearing should be strictly or liberally applied under the circumstances.

Aneco bats for strict construction. It cites a litany of cases which held that notice of hearing is mandatory. A motion without the required notice of hearing is a mere scrap of paper. It does not toll the running of the period to file an appeal or a motion for reconsideration. It is argued that the original RTC decision is already final and executory because of the defective motion.[24]

Landex counters for liberal construction. It similarly cites a catena of cases which held that procedural rules may be relaxed in the interest of substantial justice. Landex asserts that the procedural defect was cured when it filed a motion setting a hearing for its motion for reconsideration. It is claimed that Aneco was properly informed of the pending motion for reconsideration and it was not deprived of an opportunity to be heard.[25]

---

[23] Rules of Civil Procedure (1997), Rule 15, Sec. 5 provides:

Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[24] *Rollo,* pp. 29-27.

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

It is true that appeals are mere statutory privileges which should be exercised only in the manner required by law. Procedural rules serve a vital function in our judicial system. They promote the orderly resolution of cases. Without procedure, there will be chaos. It thus behooves upon a litigant to follow basic procedural rules. Dire consequences may flow from procedural lapses.

Nonetheless, it is also true that procedural rules are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Public policy dictates that court cases should, as much as possible, be resolved on the merits not on mere technicalities. Substantive justice trumps procedural rules. In *Barnes v. Padilla*,[26] this Court held:

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final x x x.
>
> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[27]

Here, We find that the RTC and the CA soundly exercised their discretion in opting for a liberal rather than a strict application of the rules on notice of hearing. It must be stressed that there are no vested right to technicalities. It is within the court's sound discretion to relax procedural rules in order to fully adjudicate the merits of a case. This Court will not interfere with the exercise of that discretion absent grave abuse or palpable

---

[26] G.R. No. 160753, June 28, 2005, 461 SCRA 533.

[27] *Barnes v. Padilla, id.* at 541.

error. Section 6, Rule 1 of the 1997 Rules of Civil Procedure even mandates a liberal construction of the rules to promote their objectives of securing a just, speedy, and inexpensive disposition of every action and proceeding.

To be sure, the requirement of a notice of hearing in every contested motion is part of due process of law. The notice alerts the opposing party of a pending motion in court and gives him an opportunity to oppose it. What the rule forbids is not the mere absence of a notice of hearing in a contested motion but the unfair surprise caused by the lack of notice. It is the dire consequences which flow from the procedural error which is proscribed. If the opposing party is given a sufficient opportunity to oppose a defective motion, the procedural lapse is deemed cured and the intent of the rule is substantially complied. In *E & L Mercantile, Inc. v. Intermediate Appellate Court*,[28] this Court held:

> Procedural due process is not based solely on a mechanistic and literal application of a rule such that any deviation is inexorably fatal. Rules of procedure, and this includes the three (3) days notice requirement, are liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding (Section 2, Rule 1, Rules of Court). In *Case and Nantz v. Jugo* (77 Phil. 517), this Court made it clear that lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.
>
> A party cannot ignore a more than sufficient opportunity to exercise its right to be heard and once the court performs its duty and the outcome happens to be against that negligent party, suddenly interpose a procedural violation already cured, insisting that everybody should again go back to square one. Dilatory tactics cannot be the guiding principle.
>
> The rule in *De Borja v. Tan* (93 Phil. 167), that "what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard," is the applicable doctrine. (See also *Aguilar v. Tan*, 31 SCRA 205; *Omico v. Vallejos*,

[28] G.R. No. 70262, June 25, 1986, 142 SCRA 385.

63 SCRA 285; *Sumadchat v. Court of Appeals*, 111 SCRA 488.)
x x x[29]

We also find that the procedural lapse committed by Landex was sufficiently cured when it filed another motion setting a hearing for its defective motion for reconsideration. Records reveal that the RTC set a hearing for the motion for reconsideration but Aneco's counsel failed to appear. The RTC then gave Aneco additional time to file comment on the motion for reconsideration.[30]

Aneco was afforded procedural due process when it was given an opportunity to oppose the motion for reconsideration. It cannot argue unfair surprise because it was afforded ample time to file a comment, as it did comment, on the motion for reconsideration. There being no substantial injury or unfair prejudice, the RTC and the CA correctly ignored the procedural defect.

The RTC and the CA did not err in dismissing the complaint for injunction; factual findings and conclusions of law of the RTC and the CA are afforded great weight and respect.

Anent the substantive issue, We agree with the RTC and the CA that the complaint for injunction against Landex should be dismissed for lack of merit. What is involved here is an undue interference on the property rights of a landowner to build a concrete wall on his own property. It is a simple case of a neighbor, petitioner Aneco, seeking to restrain a landowner, respondent Landex, from fencing his own land.

Article 430 of the Civil Code gives every owner the right to enclose or fence his land or tenement by means of walls, ditches, hedges or any other means. The right to fence flows from the right of ownership. As owner of the land, Landex may fence his property subject only to the limitations and restrictions

---

[29] *E & L Mercantile, Inc. v. Intermediate Appellate Court, id.* at 392.

[30] *Rollo,* p. 62.

provided by law. Absent a clear legal and enforceable right, as here, We will not interfere with the exercise of an essential attribute of ownership.

Well-settled is the rule that factual findings and conclusions of law of the trial court when affirmed by the CA are accorded great weight and respect. Here, We find no cogent reason to deviate from the factual findings and conclusion of law of the trial court and the appellate court. We have meticulously reviewed the records and agree that Aneco failed to prove any clear legal right to prevent, much less restrain, Landex from fencing its own property.

Aneco cannot rely on the road lot under the old subdivision project of FHDI because it knew at the time of the sale that it was buying ordinary lots, not subdivision lots, from FHDI. This is clear from the deed of sale between FHDI and Aneco where FHDI manifested that it was no longer interested in pursuing its own subdivision project. If Aneco wants to transform its own lots into a subdivision project, it must make its own provision for road lots. It certainly cannot piggy back on the road lot of the defunct subdivision project of FHDI to the detriment of the new owner Landex. The RTC and the CA correctly dismissed the complaint for injunction of Aneco for lack of merit.

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 166785. July 28, 2008]

OROPORT CARGOHANDLING SERVICES, INC., represented by its President FRANKLIN U. SIAO, *petitioner, vs.* **PHIVIDEC INDUSTRIAL AUTHORITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED. — A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order, requiring a party, court, agency or person to refrain from a particular act or acts. A preservative remedy, its issuance lies upon the existence of a claimed emergency or extraordinary situation which should be avoided; otherwise, the outcome of litigation would be useless as far as the party applying for the writ is concerned. There must be a clear and material right to be protected and that the facts against which the injunction is to be directed violate said right.

2. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 8975; RESERVES THE POWER TO ISSUE INJUNCTIVE WRITS ON GOVERNMENT INFRASTRUCTURE PROJECTS EXCLUSIVELY WITH THE SUPREME COURT. — Rep. Act No. 8975 reserves the power to issue injunctive writs on government infrastructure projects exclusively with this Court and the RTC cannot issue an injunctive writ to stop the cargo-handling operations at MCT. The issues presented by Oroport can hardly be considered constitutional, much more constitutional issues of extreme urgency. Hence, the appellate court did not err in annulling the writ of preliminary injunction and in ruling that the RTC had no jurisdiction to enjoin the operation of this multi-billion government infrastructure project.

3. ID.; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; FRANCHISES FROM CONGRESS ARE NOT REQUIRED BEFORE EACH AND EVERY PUBLIC UTILITY MAY OPERATE; THE LAW HAS GRANTED CERTAIN ADMINISTRATIVE AGENCIES THE POWER

TO GRANT LICENSES FOR OR TO AUTHORIZE THE OPERATION OF CERTAIN PUBLIC UTILITIES. — PIA properly took over MCT operations *sans* a franchise or license as it was necessary, temporary and beneficial to the public. We have ruled that franchises from Congress are not required before each and every public utility may operate because the law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities. Article XII, Section 11 of the Constitution does not necessarily imply that only Congress can grant such authorization. The determination of whether the winning bidder is qualified to undertake the contracted service should be left to the sound judgment of PPA or PIA as these agencies are in the best position to evaluate the feasibility of the projections of the bidders and to decide which bid is compatible with the project's development plans. Neither the Court nor Congress has the time and the technical know-how to look into this matter. x x x

4. ID.; ID.; ID.; ID.; BUSINESS PERMITS MAY BE TERMINATED BY AUTHORITIES ANY TIME BASED ON POLICY GUIDELINES AND STATUTES BECAUSE WHAT IS GIVEN IS NOT A PROPERTY RIGHT BUT A MERE PRIVILEGE. — Oroport failed to convince us that it has a clear and actual right to be enforced and protected. Oroport has no right to manage MCT since it has no contractual relations with PIA, Phividec or PPA. It has no statutory grant of authority. Clearly, it has no right *in esse* to be protected by an injunctive writ. Even if Oroport won the public bidding and obtained an exclusive contract for port operations at MCT, it has no vested right to operate MCT because contract clauses are not inflexible barriers to public regulations. Business permits may be terminated by authorities any time base on policy guidelines and statutes because what is given is not a property right but a mere privilege. In fact, the right of PPA or its anointed government agencies like PIA to take over port facilities from operators whose contracts have expired is indubitable. The law authorizing PPA to take over arrastre and stevedoring services in government-owned ports and cancel permits issued to private operators is a valid exercise of police power; it does not violate due process of law as the exercise of police power is paramount over the right against non-impairment of contracts. Moreover, a regulated monopoly is not proscribed in industries affected with public

interest such as in port rendition of arrastre/stevedoring services in Philippine ports.

APPEARANCES OF COUNSEL

Kho Roa & Partners for petitioner.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Can Phividec[1] Industrial Authority (PIA) temporarily operate as a seaport cargo-handler upon agreement with the Philippine Ports Authority (PPA)[2] *sans* a franchise or a license from Congress or PPA?

Petitioner Oroport Cargohandling Services, Inc. (Oroport) impugns in this petition for review on *certiorari* the Decision[3] dated January 5, 2005 of the Court of Appeals in CA-G.R. SP No. 84147 annulling the orders[4] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 39 which enjoined the cargo-handling operations of respondent PIA at the Mindanao Container Terminal (MCT).

Oroport is a cargo-handling contractor[5] at the Cagayan de Oro International Port (CDOIP) while PIA is a Phividec subsidiary created to uplift the socio-economic condition of war veterans, military retirees and their children by allowing them to participate in its development undertakings as employees, developers and

---

[1] Philippine Veterans Investment Development Corporation, a government-owned and controlled corporation.

[2] Created under Presidential Decree No. 857 (1975).

[3] *Rollo*, pp. 24-44. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. concurring.

[4] Records, Vol. I, pp. 309-317, 327-351.

[5] *Id*. at 12-19. Probationary Contract For Cargo-Handling Services.

business partners with the mission to establish, develop and professionally administer industrial areas, ports and utilities.[6]

In 2003, Oroport bid for the management and operation of MCT, a ₱3.24 billion government infrastructure project at Phividec Industrial Estate in Tagoloan, Misamis Oriental. MCT was funded by a loan contracted by the Philippine government with the Japan Bank for International Cooperation (JBIC).[7] It was later renamed Mindanao Container Terminal Sub-Port and placed under the jurisdiction of the Bureau of Customs as a sub-port entry.[8]

As no bidder won in the two public biddings, PIA took over MCT operations.

On April 19, 2004, Oroport sued PIA and Phividec in the RTC for injunction and damages. It accused PIA of illegally operating MCT without a license from PPA or a franchise from Congress. It also alleged unfair competition since PIA handled cargoes of the general public. It further invoked unlawful deprivation of property as it stands to incur investment losses with PIA's take over of MCT operations. It contended that PIA's operation of MCT will cause it damage and irreparable injury as PIA would eventually siphon the cargo traffic of CDOIP

---

[6] Presidential Decree No. 538 (CREATING AND ESTABLISHING THE PHIVIDEC INDUSTRIAL AUTHORITY AND MAKING IT A SUBSIDIARY AGENCY OF THE PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORPORATION DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, AND FOR OTHER PURPOSES, done on August 13, 1974), as amended by Presidential Decree No. 1491 (AMENDING SECTION 8 OF PRESIDENTIAL DECREE NUMBERED FIVE HUNDRED THIRTY-EIGHT, done on June 11, 1978).

[7] Records, Vol. I, pp. 98-106. See Loan Agreement for Mindanao Container Terminal Project Between Japan Bank for International Cooperation and the Government of the Republic of the Philippines dated April 7, 2000.

[8] Executive Order No. 542 (DECLARING THE MINDANAO CONTAINER TERMINAL AS A SUB-PORT OF ENTRY TO BE KNOWN AS THE MINDANAO CONTAINER TERMINAL SUB-PORT, PURSUANT TO SECTION 606 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, as Amended, done on July 14, 2006).

to MCT. It prayed that PIA be stopped from handling cargoes not owned or consigned to its industrial estate locators.[9]

During the hearings for its application for preliminary injunction, Oroport claimed that PIA's operation of MCT is highly adverse to the country since it does not have experience in seaport cargo-handling. It contended that since the core business of PIA and Phividec is the establishment and operation of industrial estates, their authority to build and operate ports should be construed merely as a complement of their primary function. Thus, the ports they built should accommodate only cargoes owned or consigned to its industrial estate locators or else it can build ports and handle cargoes anywhere, directly competing with PPA.

PIA and Phividec invoked Republic Act No. 8975[10] which prohibits lower courts from issuing temporary restraining orders or preliminary injunctions on government infrastructure projects especially where an injunction in this case would mean wasting ₱3.24 billion resulting in a loan default. They highlighted the fact that PIA's operation of MCT is endorsed by the government and by various groups.[11] They added that preventing PIA from

---

[9] Records, Vol. I, pp. 5-11.

[10] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES, approved on November 7, 2000.

[11] Records, Vol. I, pp. 107-137. By Representatives Oscar S. Moreno and Augusto H. Baculio of the First and Second Districts, respectively, of Misamis Oriental; Department of Transportation and Communications Secretary Vicente C. Rivera, Jr.; National Economic and Development Authority Assistant Director-General and Officer-in-Charge, NDO Augusto B. Santos; Department of Trade and Industry Secretary Jose Trinidad Pardo; Department of National Defense Secretary Orlando S. Mercado; Senate President Marcelo B. Fernan; Regional Development Council-10 of Northern Mindanao; Mindanao Economic Development Council; Provincial Governments of Misamis Oriental and Bukidnon; Cagayan de Oro City Government; Tagoloan Municipal Government; Northern Mindanao Shippers Association; Confederation of Philippine Exporters Foundation; Office of the Government Corporate Counsel.

operating MCT will aggravate the huge financial deficit of the national government and contribute to the collapse of the economy.

On April 27, 2004, the RTC enjoined PIA and Phividec from handling cargoes not owned or consigned to its industrial estate locators.[12] PIA sought to reverse the order and dismiss the complaint which Oroport opposed.

On May 11, 2004, the RTC issued the two orders, thus:

> WHEREFORE**,** in view of the foregoing and for lack of merit, the Motion for Reconsideration filed by defendants of the Order of this Court dated April 27, 2004 . . . with Urgent Motion for the Dismissal of the instant complaint, is hereby **DENIED.**
>
> SO ORDERED.[13]
>
> . . . . . .
>
> WHEREFORE, in view of the foregoing, the injunctive writ prayed for by plaintiff is hereby **GRANTED** for being meritorious. Accordingly, defendants PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORP. (PHIVIDEC) and PHIVIDEC INDUSTRIAL AUTHORITY (PIA), and any or all persons acting for and in its behalf, [are] hereby ordered to **CEASE** and **DESIST** from engaging in cargo handling operations of cargoes at the Mindanao Container Terminal which are not owned or consigned to locators inside the Phividec Industrial Estate, until further orders from this Court.
>
> To answer for whatever damages that defendants may sustain by reason of this preliminary injunction, if the Court should finally decide that plaintiff is not entitled thereto, plaintiff is hereby ordered to put up a bond of TWO MILLION (2,000,000.00) PESOS.
>
> SO ORDERED.[14]

The RTC ruled that Rep. Act No. 8975 is inapplicable as Oroport does not seek to restrain the operation of MCT but that it must be operated legally since PIA's right to operate is limited to cargoes owned or consigned to its industrial estate

---

[12] *Id*. at 243-246.

[13] *Id*. at 351.

[14] *Id*. at 317.

locators. The RTC emphasized that before PIA could operate as a public utility, it should be properly authorized by PPA since cargo-handling is a regulated activity. In imposing low tariff rates and accepting third-party cargoes, PIA unlawfully deprived Oroport of its property.[15] The RTC explained that the act sought to be enjoined will cause Oroport prejudice and serious damage as the existing cargo-handling operations at the CDOIP will be adversely affected if PIA is allowed to operate MCT.[16]

On May 18, 2004, PIA sought to dismiss the complaint and filed a ₱30 million-counterclaim.[17] On May 28, 2004, PIA moved to lift and dissolve the preliminary injunction due to the alleged defective and invalid plaintiff's bond and insufficiency of the ₱2 million bond to cover for its projected damage.[18] Oroport opposed.[19] The RTC upheld the opposition.[20]

On June 1, 2004, PIA filed with the Court of Appeals a Petition for *Certiorari* and Prohibition[21] invoking Section 3[22] of Rep. Act No. 8975, arguing that the RTC had no jurisdiction to issue writs of preliminary injunction against operations of

---

[15] *Id*. at 342-343, 345.

[16] *Id*. at 315.

[17] *Id*. at 456-474.

[18] Records, Vol. II, pp. 27-34.

[19] *Id*. at 207-209.

[20] *Id*. at 242-243.

[21] *Id*. at 53-78.

[22] SEC. 3 *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions*. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

x x x x x x x x x

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

x x x x x x x x x

government infrastructure projects. Assuming it had, it issued the writ without hearing and Oroport was not entitled thereto. It prayed *ex parte* for a TRO.[23] Oroport countered that Rep. Act No. 8975 exempts urgent constitutional issues from the prohibition to issue injunctive relief.[24]

On January 5, 2005, the Court of Appeals annulled the subject orders, ruling that the RTC committed grave abuse of discretion in issuing them. Hence, this petition, raising two issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD ERRED IN RULING THAT THE REGIONAL TRIAL COURT, BRANCH 39, HAD NO JURISDICTION TO ISSUE THE TWO (2) ORDERS OF MAY 11, 2004; AND

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD ERRED IN GRANTING THE RELIEF IN FAVOR OF PIA DESPITE THE FACT THAT IT HAD NOT SHOWN ANY CLEAR RIGHT TO THE RELIEF PRAYED FOR.[25]

Simply, the issues are: (1) Did the Court of Appeals err in ruling that the RTC had no jurisdiction to issue the writ of preliminary injunction? and (2) Can PIA temporarily operate as a seaport cargo-handler upon agreement with PPA *sans* a franchise or a license?

Oroport contends that PIA's operation of MCT is illegal as it has no license or franchise to operate as a public utility. It also constitutes unfair competition because PIA offered lower tariff rates than those recommended at the failed public biddings,

---

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. . . .

x x x x x x x x x

[23] Records, Vol. II, pp. 232-237.

[24] *Id.* at 250-275.

[25] *Rollo*, p. 358.

prejudicing the loan agreement with JBIC to the disadvantage of the taxpayers. PIA likewise engaged a third-party in hiring stevedores, which is prohibited under PPA rules and regulations. Oroport also argues that PIA's operation of MCT constitutes unlawful deprivation of property due to potential investment losses in modernizing CDOIP as required by its two-year probationary contract with PPA. It contends that the appellate court erred in reversing the RTC's finding of fact which is a mere error of judgment, not an error of jurisdiction, and which is reviewable by ordinary appeal and not by *certiorari* as it is not necessarily equivalent to grave abuse of discretion. Oroport stresses that the appellate court did not categorically rule that the RTC acted without or in excess of jurisdiction or with grave abuse of discretion.

PIA counters that it does not need a license from PPA to be a port operator or cargo-handler due to their Memoranda of Agreement (MOA) dated October 20, 1980 and October 16, 1995, which provide as follows:

x x x x x x x x x

5. CARGO-HANDLING SERVICES. — All cargo handling services on and off vessel shall be under the control, regulation and supervision of the PIA as well as rates and charges in connection therewith using as basis the PPA approved rates in Macabalan Wharf, Cagayan de Oro City or in private ports as the case may be but in no case shall said charges be higher than the rates prescribed by PPA. (MOA dated October 20, 1980).

x x x x x x x x x

4. CARGO-HANDLING SERVICES. — All cargo handling services, on and off vessel shall be under the control, regulation and supervision of the PIA as well as the rates and charges in connection therewith using as basis the rates prescribed by PPA. ([Amended] MOA dated October 16, 1995. . . .)[26]

It claims that it operated MCT after the failed public biddings since the loan agreement with JBIC specified non-operation of

---

[26] *Id.* at 324-325; Records, Vol. I, pp. 138-145.

MCT as a cause for default that will render the entire loan due and demandable. PIA argues that the RTC had no jurisdiction to issue a writ of preliminary injunction against the operation of MCT considering that such power and authority resides exclusively with this Court. Hence, the act of the RTC must be corrected by *certiorari* considering that it is an error of jurisdiction, not a mere error of judgment. It also argues that the MOA and its amendment embody PPA's concurrence with the exercise of PIA's power and authority to operate ports inside its estate that would cater to any client. PIA swears that its operation of MCT is only temporary to prevent being declared in default by JBIC.[27]

After painstakingly weighing the pros and cons presented in the records and the parties' memoranda, we deny the petition.

First. A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order, requiring a party, court, agency or person to refrain from a particular act or acts.[28] A preservative remedy, its issuance lies upon the existence of a claimed emergency or extraordinary situation which should be avoided; otherwise, the outcome of litigation would be useless as far as the party applying for the writ is concerned. There must be a clear and material right to be protected and that the facts against which the injunction is to be directed violate said right.

In annulling the subject orders, the Court of Appeals explained that while Section 3 of Rep. Act No. 8975 exempts urgent constitutional issues from the prohibition to issue injunctive relief, it does not follow that a claim of unlawful deprivation of property involves such an issue in the same manner that a robbery victim unlawfully deprived of property cannot claim that his case involves a constitutional issue. It reasoned that Rep. Act No. 8975 is clear that it is not within the RTC's jurisdiction to issue an injunctive writ against the operation of a government infrastructure project. Since Oroport failed to specify what property was robbed of it, the appellate court ruled that PIA does not

---

[27] *Rollo*, pp. 209-213, 216-217.

[28] REVISED RULES OF COURT (1997), Rule 58, Section 1.

need a license from PPA to operate because the MOA[29] and its amendment granted PIA exclusive control and supervision of MCT on all cargo-handling services, including the discretion to impose rates and charges not higher than those PPA-prescribed.

Rep. Act No. 8975 reserves the power to issue injunctive writs on government infrastructure projects exclusively with this Court and the RTC cannot issue an injunctive writ to stop the cargo-handling operations at MCT. The issues presented by Oroport can hardly be considered constitutional, much more constitutional issues of extreme urgency. Hence, the appellate court did not err in annulling the writ of preliminary injunction and in ruling that the RTC had no jurisdiction to enjoin the operation of this multi-billion government infrastructure project.

Second. PPA was created for the purpose of, among others, promoting the growth of regional port bodies. In furtherance of this objective, PPA is empowered, after consultation with relevant government agencies, to make port regulations particularly to make rules or regulation for the planning, development, construction, maintenance, control, supervision and management of any port or port district in the country. With this mandate, the decision to bid out cargo-handling services is within the province and discretion of PPA which necessarily required prior study and evaluation. This task is best left to the judgment of PPA and cannot be set aside absent grave abuse of discretion on its part.[30] As long as the standards are set in determining the contractor and such standards are reasonable and related to the purpose for which they are used, courts should not inquire into the wisdom of PPA's choice.[31] In *Philippine Ports Authority v. Court of Appeals*[32] where PPA hired rival contractors to operate in a major port, we held:

---

[29] Records, Vol. I, pp. 138-145.

[30] *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, G.R. No. 145742, July 14, 2005, 463 SCRA 358, 376.

[31] *Anglo-Fil Trading Corporation v. Lazaro*, G.R. Nos. 54958 and 54966, September 2, 1983, 124 SCRA 494, 523.

[32] G.R. Nos. 115786-87, February 5, 1996, 253 SCRA 212.

Entering into a contract for the operation of a floating grains terminal, notwithstanding the existence of other stevedoring contracts pertaining to the South Harbor, is undoubtedly an exercise of discretion on the part of the PPA. The exercise of such discretion is a policy decision that necessitates such procedures as prior inquiry, investigation, comparison, evaluation and deliberation. No other persons or agencies are in a better position to gauge the need for the floating grains terminal than the PPA; certainly, not the courts.[33]

Since PPA has given PIA the right to manage and operate MCT, we cannot simply abrogate it.

PIA properly took over MCT operations *sans* a franchise or license as it was necessary, temporary and beneficial to the public. We have ruled that franchises from Congress are not required before each and every public utility may operate because the law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities. Article XII, Section 11[34] of the Constitution does not necessarily imply that only Congress can grant such authorization. The determination of whether the winning bidder is qualified to undertake the contracted service should be left to the sound judgment of PPA or PIA as these agencies are in the best position to evaluate the feasibility of the projections of the bidders and to decide which bid is compatible with the project's development plans. Neither the Court nor Congress has the

---

[33] *Id*. at 234.

[34] *Section 11*. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

time and the technical know-how to look into this matter.[35] Furthermore, Section 4(e) of Presidential Decree No. 538, gives PIA the legal authority to construct, operate and maintain port facilities including stevedoring and port terminal services even without PPA's authority. The MOA granting PIA the exclusive control and supervision of all ports, wharves, piers and services within the industrial area, recognizing its power to collect port fees, dues and charges, makes PIA's authority over MCT operations more secure.

After the two public biddings failed, PIA was left with no other option but to take over MCT operations so that it could earn, pending the award to a qualified bidder, some amount to pay the loan to JBIC and to avoid being declared in default. During the September 27, 2004 hearing before the Court of Appeals-Mindanao, Atty. Raul Ragandang of PIA stressed that decision when Justice Punzalan-Castillo asked him if Phividec will permanently engage in cargo-handling services by citing failure of bidding as excuse. Atty. Ragandang replied that Phividec will not permanently engage in cargo-handling considering that it has no capacity to operate MCT:

x x x x x x x x x

ATTY. RAGANDANG:

… [Phividec] was just forced to operate temporarily considering that the port will be left unused and the Japanese requires that non-usage of the port is a violation of the loan agreement. In fact, the representative of the Japan Bank for International Cooperation talked to the PIA administrator and the Secretary of Finance advising the two . . . that the non-operation of the port is a violation of the loan agreement, which will result, according to the JBIC, in non-extension of other loans, pending before the JBIC. So it will greatly hamper the government infrastructural projects considering that the government now has no money to sustain these infrastructure projects and JBIC extends a loan of 40 years to pay and less than 1% of interest in the repayment of 10 years, Your Honor. So, you just imagine the magnitude of the deprivation of the government or its

[35] *Albano v. Reyes*, G.R. No. 83551, July 11, 1989, 175 SCRA 264, 271-272, 274.

infrastructure projects because of the non-operation of this port. JBIC will declare that [it] has violated the loan agreement and the subsequent, finding of other government projects will no longer be entertained.[36]

Notably, Oroport is estopped from questioning PIA's authority because it participated in the two public biddings. As a cargo-handling contractor at the CDOIP, it is not a real party-in-interest in this case as only PPA may protest PIA's operation of MCT. As Oroport admitted, PPA is amenable to PIA's operation of MCT as they entered into an exclusive agreement. Even assuming that Oroport is a real party-in-interest, it is not entitled to an injunction as the alleged damage or threat of damage is speculative and factually baseless. Cargo-handling in a different, though adjacent, port will not necessarily result in revenue loss since CDOIP is already congested.

Moreover, Oroport failed to convince us that it has a clear and actual right to be enforced and protected. Oroport has no right to manage MCT since it has no contractual relations with PIA, Phividec or PPA. It has no statutory grant of authority. Clearly, it has no right *in esse* to be protected by an injunctive writ.[37] Even if Oroport won the public bidding and obtained an exclusive contract for port operations at MCT, it has no vested right to operate MCT because contract clauses are not inflexible barriers to public regulations.[38] Business permits may be terminated by authorities any time based on policy guidelines and statutes because what is given is not a property right but a mere privilege.[39] In fact, the right of PPA or its anointed government agencies like PIA to take over port facilities from operators whose contracts have expired is indubitable.[40] The

---

[36] *Rollo*, pp. 42-43.

[37] *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, G.R. Nos. 147861 and 155252, November 18, 2005, 475 SCRA 426, 435-436.

[38] *Anglo-Fil Trading Corporation v. Lazaro*, *supra* note 31, at 518.

[39] *Id.* at 520-522.

[40] *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, *supra* at 437.

law authorizing PPA to take over arrastre and stevedoring services in government-owned ports and cancel permits issued to private operators is a valid exercise of police power; it does not violate due process of law as the exercise of police power is paramount over the right against non-impairment of contracts. Moreover, a regulated monopoly is not proscribed in industries affected with public interest such as in port rendition of arrastre/stevedoring services in Philippine ports.[41]

Oroport's allegation of unfair competition also fails because private monopolies are not necessarily prohibited by the Constitution. Certain public utilities must be given franchises for public interest and these franchises do not violate the law against monopolies.[42] PIA's policy decision to handle the cargo operation itself enjoys presumption of regularity as it did not violate any relevant law, rules, regulations, ordinance or issuances in so doing. Even so, there is no unfair competition as PIA (1) is not a competitor of Oroport; (2) imposes the same tariff rates as Oroport; and (3) is operating in an entirely separate and distinct port. As PIA argues, the public deserves alternative and better facilities. MCT is not exclusive to the industrial estate locators as the feasibility study of MCT prepared by PIA and approved by the National Economic Development Authority emphasized that MCT will cater not only to locator firms but also to outside clients and prospective users. Addressing CDOIP congestion, MCT is beneficial to shipping lines and the general public.

WHEREFORE, the petition is *DENIED* and the assailed Decision dated January 5, 2005 of the Court of Appeals in CA-G.R. SP No. 84147 is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

---

[41] *Pernito Arrastre Services, Inc. v. Mendoza*, G.R. No. 53492, December 29, 1986, 146 SCRA 430, 439-440, 444.

[42] *Anglo-Fil Trading Corporation v. Lazaro, supra* note 31, at 522.

FIRST DIVISION

[G.R. No. 168252. July 28, 2008]

EUGENIO MABAGOS, *petitioner, vs.* **ORLANDO MANINGAS, HERMAN MANINGAS and EDWIN MANINGAS represented by MARIANO SERRANO as their Attorney-in-Fact,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; TENANCY LAW; CERTIFICATIONS ISSUED BY THE AUTHORIZED REPRESENTATIVES OF THE SECRETARY OF AGRARIAN REFORM IN A GIVEN LOCALITY ARE MERELY PRELIMINARY OR PROVISIONAL AND ARE NOT BINDING ON THE COURTS. — Certifications issued by the authorized representatives of the Secretary of Agrarian Reform in a given locality (concerning the presence or absence of a tenancy relationship between the contending parties) are merely preliminary or provisional and are not binding on the courts.

2. ID.; ID.; ID.; REQUISITES OF A TENANCY RELATIONSHIP. — The requisites of a tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject land is agricultural; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation and (6) there is a sharing of the harvest.

3. ID.; ID.; ID.; A TENANCY RELATIONSHIP CAN ONLY BE CREATED WITH THE CONSENT OF THE TRUE AND LAWFUL LANDHOLDER; ACTUAL MEETING OF THE MINDS OF THE PARTIES TO ESTABLISH SUCH RELATIONSHIP IS NECESSARY. — [A] tenancy relationship can only be created with the consent of the true and lawful landholder. There being supposedly a legal relationship, the intent of the parties and their agreement were important. Petitioner's honest belief and impression that he was the tenant of the land did not necessarily make him one. The actual meeting of the minds of the parties (*i.e.* the landowner and the tenant)

to establish a landowner-tenant relationship for the purpose of agricultural production and with the objective to share harvests was necessary.

APPEARANCES OF COUNSEL

Victorino O. Borja for petitioner.
Puno & 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 March 9, 2005 decision[2] and May 17, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86440.

On November 28, 1997, petitioner Eugenio Mabagos filed a petition for pre-emption and/or redemption[4] against respondents Orlando, Herman and Edwin Maningas in the Regional Office of the Department of Agrarian Reform Adjudication Board (DARAB), Region III, Cabanatuan City. The case was docketed as DARAB Case No. 03183-SNE-97.

Petitioner alleged that he was a tenant of an agricultural land described as Lot No. 2531 in Barrio Sinasajan, Peñaranda, Nueva Ecija, with an area of around 100,930 sq. m. The subject land was previously covered by Original Certificate of Title No. 23198 which was cancelled by Transfer Certificate of Title No. NT-264442 registered in the names of Bienvenido Padilla, Belen

---

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mariano C. del Castillo and concurred in by Associate Justices Salvador J. Valdez, Jr. and Magdangal M. de Leon of the Eighth Division of the Court of Appeals. *Rollo*, pp. 34-48.

[3] Associate Justice Valdez, Jr. was replaced by Associate Justice Mario L. Guariña III in the Special Former Eighth Division; *id.*, p. 50.

[4] Under Sections 11 and 12 of RA 3844 (otherwise known as the "Agricultural Land Reform Code"); *id.*, p. 21.

P. Bartilad and Armando Padilla. He claimed that he had been in possession of such land for 35 years, cultivating it and paying leasehold rentals to the registered owners. However, he discovered that the land was sold to respondents for the amount of ₱120,000 on July 11, 1997[5] without it first being offered to him as tenant.[6]

On March 30, 1999, the provincial adjudicator of Region III of the DARAB rendered a decision declaring that petitioner was a tenant but only of five hectares of the subject land.[7] On reconsideration, the decision was set aside and the Municipal Agrarian Reform Office (MARO) investigation report dated August 29, 1997 was adopted in a resolution dated September 29, 2000.[8] This report stated that the land was grassland/grazing land and therefore not tenanted.[9] Petitioner filed an appeal in the DARAB.

In a decision dated November 17, 2003, the DARAB reversed and set aside the September 29, 2000 resolution and declared petitioner the *bona fide* tenant of the land and recognized his right of redemption.[10] It denied reconsideration on August 6, 2004.[11]

Aggrieved, respondents filed an appeal in the CA docketed as CA-G.R. SP No. 86440.[12] In a decision dated March 9, 2005, the CA set aside the DARAB decision and resolution and dismissed petitioner's petition for pre-emption and/or redemption. It denied reconsideration in a resolution dated May 17, 2005.

---

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

[6] The certificate of sale was annotated as entry no. 7415 in favor of respondents and appeared at the back of TCT No. NT-264442; *id.*, pp. 35-36.

[7] Penned by Provincial Agrarian Reform Adjudicator (PARAD) Romeo Bello; *id.*, pp. 37-38.

[8] Penned by PARAD Napoleon Baguilat; *id.*, pp. 22 and 39.

[9] *Id.*, pp. 44-45.

[10] Docketed as DARAB case no. 10240.

[11] *Rollo*, pp. 39-40.

[12] Under Rule 43 of the Rules of Court; *id.*, p. 34.

Hence this petition raising the sole issue of whether or not petitioner was the tenant of the subject landholding who had the right of redemption under Section 12 of RA 3844, as amended.[13]

As proof of tenancy, petitioner showed receipts of the leasehold rentals he had paid the landowners from 1991 to 1997 which were collected by Meguela Lachica, Lolita Madrid and Piring Abes. He also presented an affidavit dated March 17, 1998 of Lachica stating that: (1) petitioner was the tiller of the land and (2) she (Lachica) was authorized by Amparo Abes, wife of Bienvenido Padilla, to collect rentals from petitioner.[14] A joint affidavit dated December 17, 1997 was also executed by Crispulo Mababa, Rodolfo Palomo and Antonio Reyes stating that they were tenants of the landholding adjacent to the land being tilled by petitioner; they confirmed that the latter had been the tenant of the land for 35 years.[15]

Respondents countered that petitioner was not a tenant of the property as certified by the Barangay Agrarian Reform Committee chairman of Sinasajan[16] and the MARO of Peñaranda, Nueva Ecija.[17] These certifications stated that the land was part of the retention area of the previous registered owners thereof, described it as grassland/grazing land and that it was not being cultivated for agricultural production. They also averred that petitioner was not serious in redeeming the subject property because he never consigned the amount of ₱120,000 in the DARAB or the Land Bank of the Philippines.[18]

---

[13] Section 12 of RA 3844 as amended by RA 6389 states:

Sec. 12. Lessee's Right of Redemption. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration x x x.

[14] *Rollo*, p. 42.

[15] *Id*., pp. 42-43.

[16] By Danilo Abesamis dated May 14, 1997; *id*., p. 20.

[17] Indorsement letter of Cesar T. Ortiona dated September 3, 1997 and investigation report of Artemio L. Gastes, Jr. dated August 29, 1997; *id.*

[18] *Id*., pp. 36-37.

The petition lacks merit.

The CA held that, as between the affidavits presented by petitioner and the MARO report, the latter should prevail since it had in its favor the legal presumption that official duty had been regularly performed.[19]

We disagree. Certifications issued by the authorized representatives of the Secretary of Agrarian Reform in a given locality (concerning the presence or absence of a tenancy relationship between the contending parties) are merely preliminary or provisional and are not binding on the courts.[20]

Nonetheless, the evidence adduced by petitioner was insufficient to prove that he was the *de jure* tenant of the subject land. The requisites of a tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject land is agricultural; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation and (6) there is a sharing of the harvest.[21]

Specifically, the first and third requisites were not met. The registered owners never recognized petitioner as their tenant. Petitioner's evidence only showed that he paid rentals to a supposed collector whose authority to collect was, however, not established. The *vinculum juris* or legal relationship between the landowner and his tenant was not clearly substantiated.

Moreover, a tenancy relationship can only be created with the consent of the true and lawful landholder.[22] There being supposedly

---

[19] *Id.*, p. 45.

[20] *Cuaño v. CA*, G.R. No. 107159, 26 September 1994, 237 SCRA 122, 137; *Oarde v. CA*, G.R. Nos. 104774-75, 8 October 1997, 280 SCRA 235, 246; *Ambayec v. CA*, G.R. No. 162780, 21 June 2005, 460 SCRA 537, 545.

[21] *Bautista v. Araneta*, 383 Phil. 114, 123 (2000), citing *Caballes v. Department of Agrarian Reform*, G.R. No. 78214, 5 December 1988, 168 SCRA 247, 254; *Nisnisan v. CA*, 355 Phil. 605, 613 (1998).

[22] *Dandoy v. Tongson*, G.R. No. 144652, 16 December 2005, 478 SCRA 195, 205, citing *Bautista v. Araneta*, *id.*, in turn citing *Lastimoza v. Blanco*, G.R. No. L-14697, 28 January 1961, 1 SCRA 231.

a legal relationship, the intent of the parties and their agreement were important.[23] Petitioner's honest belief and impression that he was the tenant of the land did not necessarily make him one.[24] The actual meeting of the minds of the parties (*i.e.* the landowner and the tenant) to establish a landowner-tenant relationship for the purpose of agricultural production and with the objective to share harvests was necessary.

While the Court is committed to social justice (and agrarian reform), we cannot acknowledge the rights claimed by one who has not proven his entitlement thereto.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J. (Chairperson), no part due to relationship to one counsel.

FIRST DIVISION

[G.R. No. 171707. July 28, 2008]

SPOUSES WILFREDO and ANGELA AMONCIO, *petitioners, vs.* **AARON GO BENEDICTO,** *respondent.*

---

[23] *Ambayec v. CA, supra* note 20 at 546, citing *Isidro v. CA*, G.R. No. 105586, 15 December 1993, 228 SCRA 503, 511.

[24] *Rimasug v. Martin*, G.R. No. 160118, 22 November 2005, 475 SCRA 703, 719, citing *Ambayec v. CA, supra* note 20.

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A REVIEW OF THE FACTS OF THE CASE IS NOT THE TASK OF THE COURT; FINDINGS OF FACT OF LOWER COURTS, RESPECTED. — Petitioners' first argument necessitates a review of the facts of the case which, as a general rule, is not the task of this Court. Under Rule 45 of the Rules, this Court shall not pass upon the findings of fact by lower courts unless they ignored salient points that would otherwise affect the outcome of the case. There is no reason for us to overturn the factual conclusions of the lower courts.

2. ID.; EVIDENCE; PAROL EVIDENCE RULE; EXPLAINED. — Rule 130, Section 9 of the Rules of Court provides: Section 9. *Evidence of written agreements.* — When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement. x x x The so-called "parol evidence" forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other terms were orally agreed on by the parties. Under the aforecited rule, the terms of the written contract are conclusive upon the parties and evidence *aliunde* is inadmissible to vary an enforceable agreement embodied in the document.

3. ID.; ID.; ID.; EXCEPTIONS. — [T]he rule is not absolute and admits of exceptions: x x x However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: (a) An intrinsic ambiguity, mistake or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement. The term "agreement" shall include wills.

4. ID.; ID.; ID.; ID.; ELUCIDATED. — The first exception applies when the ambiguity or uncertainty is readily apparent from reading the contract. The wordings are so defective that what

the author of the document intended to say cannot be deciphered. It also covers cases where the parties commit a mutual mistake of fact, or where the document is manifestly incomplete as the parties do not intend to exhibit the whole agreement but only to define some of its terms. The second exception includes instances where the contract is so obscure that the contractual intention of the parties cannot be understood by mere inspection of the instrument. Thus, extrinsic proof of its subject matter, of the relation of the parties and of the circumstances surrounding them when they entered into the contract may be received as evidence. Under the third exception, the parol evidence rule does not apply where the purpose of introducing the evidence is to show the invalidity of the contract. This includes cases where a party alleges that no written contract ever existed, or the parties fail to agree on the terms of the contract, or there is no consideration for such agreement. The fourth exception involves a situation where the due execution of the contract or document is in issue.

5. ID.; ID.; ID.; ID.; A PARTY TO A CONTRACT MAY PROVE THE EXISTENCE OF ANY SEPARATE ORAL AGREEMENT AS TO ANY MATTER WHICH IS NOT INCONSISTENT WITH ITS TERMS; THIS MAY BE DONE IF, FROM THE CIRCUMSTANCES OF THE CASE, THE COURT BELIEVES THAT THE DOCUMENT DOES NOT CONVEY ENTIRELY THE WHOLE OF THE PARTIES' TRANSACTION; APPLICABLE IN CASE AT BAR. — The present case does not appear to fall under any of the given exceptions. *However, a party to a contract may prove the existence of any separate oral agreement as to any matter which is not inconsistent with its terms. This may be done if, from the circumstances of the case, the court believes that the document does not convey entirely the whole of the parties' transaction.* In this case, there are tell-tale signs that petitioners and respondent had other agreements aside from those established by the lease contract. And we find it difficult to ignore them.

6. ID.; ID.; ID.; WHERE A PARTY ENTITLED TO THE BENEFIT OF THE PAROL EVIDENCE RULE ALLOWS SUCH EVIDENCE TO BE RECEIVED WITHOUT OBJECTION, HE CANNOT, AFTER THE TRIAL HAS CLOSED AND THE CASE HAS BEEN DECIDED AGAINST HIM, INVOKE THE

RULE IN ORDER TO SECURE A REVERSAL OF THE JUDGMENT. — [P]etitioners also failed to make a timely objection against respondent's assertion of their prior agreement on the construction of the buildings. Where a party entitled to the benefit of the parol evidence rule allows such evidence to be received without objection, he cannot, after the trial has closed and the case has been decided against him, invoke the rule in order to secure a reversal of the judgment. Hence, by failing to object to respondent's testimony in the trial court, petitioners waived the protection of the parol evidence rule.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; THE CONTRACT IS THE LAW BETWEEN THE PARTIES; HOWEVER, ITS STRICT ENFORCEMENT CANNOT BE DONE IF IT WOULD RESULT IN A PATENTLY UNJUST JURIDICAL SITUATION. — As a rule, the contract is the law between the parties that must be enforced in *sensu strictione*. However, it cannot be done under the circumstances of this case. To do so would result in a patently unjust juridical situation. We, as a court not only of justice but of equity as well, may exercise our *equitas jurisdictio* to refine the rough edges of the rule and avoid injustice.

8. ID.; ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; IF ONE OF THE CONTRACTING PARTIES DERIVED SOME BENEFIT BUT DID NOT GIVE ANYTHING FOR IT TO THE OTHER, IT IS ONLY FAIR THAT HE SHOULD RETURN THE AMOUNT BY WHICH HE WAS UNJUSTLY ENRICHED. — If one of the contracting parties derived some benefit but did not give anything for it to the other, it is only fair that he should return the amount by which he was unjustly enriched. Equity dictates that petitioners be held liable for the expenses incurred by respondent in constructing the buildings that went to them. No man ought to be enriched by another's injury. *Nemo ex alterius incommonde debet lecupletari.*

APPEARANCES OF COUNSEL

Henry Y. Tuason for petitioners.
Augusto P. Jimenez, Jr. for respondent.

D E C I S I O N

CORONA, *J.*:

At bar is an appeal by *certiorari* under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals (CA) in CA-G.R. CV No. 79341[1] which, in turn, affirmed the decision of the Regional Trial Court (RTC), Branch 82 of Quezon City.

The facts follow.

On July 15, 1997, petitioners Wilfredo and Angela Amoncio entered into a contract of lease with a certain Ernesto Garcia over a 120 sq. m. portion of their 600 sq. m. property in Quezon City.

On August 20, 1997, petitioners entered into another contract of lease, this time with respondent Aaron Go Benedicto over a 240 sq. m. portion of the same property. The contract read:

> WHEREAS, the Lessor is the absolute owner of a parcel of land with an area of (600) [sq. m.] situated in Neopolitan, Quezon City covered by T.C. T. No. 50473 of the Register of Deeds of Quezon City, 240 [sq. m.] of which is being leased to the lessee;
>
> That for and in consideration of the amount of NINETEEN THOUSAND TWO HUNDRED PESOS (₱19,200.00), Philippines Currency, monthly rental[,] the Lessor herein lease a portion of said parcel of land with an area of 240 sq. m. to the lessee, subject to the following terms and conditions:
>
> 1. That the term of the lease is for [f]ive (5) years renewable annually for a maximum of five (5) years from the execution of this contract;
>
> 2. The Lessee shall pay in advance the monthly rental for the land in the amount of ONE HUNDRED FIFTEEN THOUSAND TWO HUNDRED PESOS (₱115,200.00) Philippines Currency equivalent to three (3) months deposit and three (3) months advance rental; commencing November, 1997;

---

[1] Penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman of the Eighth Division of the Court of Appeals. *Rollo*, pp. 27-37.

3. The [Lessee] shall issue postdated checks for the succeeding rentals to the Lessor;

4. That in the event of failure to complete the term of the lease, the lessee is still liable to answer for the rentals of the remaining period;

5. That all the improvement on the land leased shall automatically become the property of the Lessor after the expiration of the term of the lease;

6. That the leased parcel of land shall be devoted exclusively for the construction supply business of the [Lessee];[2]

x x x x x x x x x

10. Design specification needs final approval by the Lessor[,] while structural improvements would have to conform to local government specification, taxes on structural improvement will be for the account of the Lessee.[3]

In December 1997, Garcia and respondent took possession of their respective leased portions.

In July 1999, Garcia pre-terminated his contract with petitioners. Respondent, on the other hand, stayed on until June 8, 2000. According to petitioners, respondent stopped paying his monthly rentals in December 1999. Shortly thereafter, petitioners claimed they discovered respondent putting up improvements on another 120 sq. m. portion of their property which was never leased to him nor to Garcia. They added he had also occupied Garcia's portion immediately after the latter left.[4]

Petitioners asked respondent to pay his arrears and desist from continuing with his construction but he took no heed. Because of respondent's failure to meet petitioners' demands, they asked him to vacate the property. On January 27, 2000, they rescinded the lease contract.

---

[2] "Annex "B", RTC Records, pp. 19-21.

[3] *Id*.

[4] Petitioners claimed respondent occupied Garcia's portion in August 1999.

On June 23, 2000, petitioners filed in the RTC of Quezon City a case[5] for recovery of possession of real property against respondent. In the complaint, petitioners asked respondent to pay the following: (1) rent from January 27, 2000 or from the time his lease contract was rescinded until he vacated the property; (2) rent for Garcia's portion from August 1999 until he vacated it and (3) rent for the remaining 120 sq. m. which was not covered by his or Garcia's contract. Petitioners likewise insisted that respondent was liable to pay his arrears from December 1999 until the expiration of his lease contract in August 2002. According to them, the lease contract provided:

"in the event of [respondent's] failure to complete the term of the lease, [he would] still be liable to answer for the rentals of the remaining period."[6]

In his answer with counterclaim, respondent denied petitioners' accusations and alleged that it was them who owed him money. According to him, he and petitioner Wilfredo Amoncio agreed to construct five commercial buildings on petitioners' property. One of the buildings was to go to Garcia, two to petitioners and the last two to him. They also agreed that he was to finance the construction and petitioners were to pay him for the two buildings assigned to them.

Respondent added he was to pay the rentals for five years and surrender the buildings (on his leased portion) to petitioners after the lapse of said period. However, in June 2000, he vacated the premises after he and petitioners could no longer settle things amicably.

Respondent asked to be paid: (1) ₱600,000 for the construction cost of the two buildings that went to petitioners[7]; (2) ₱300,000 as adjusted cost of the portion leased to him and (3) ₱10,000 as attorney's fees.

---

[5] With prayer for the issuance of the writ of preliminary injunction. RTC Records, pp. 1-4.

[6] *Id.*, p. 8.

[7] The records show that the construction cost for each building was ₱300,000. CA Records, p. 40.

After trial, the RTC gave credence to respondent's version and dismissed petitioners' case for lack of factual and legal basis. It also granted respondent's counterclaim:

> WHEREFORE, premises considered. Judgment is hereby rendered in favor of [respondent] and against [petitioners] DISMISSING the latter's complaint for lack of factual and legal basis.
>
> On the counterclaim, [petitioners] are hereby ordered to pay [respondent] as follows:
>
> a. The sum of SIX HUNDRED THOUSAND (₱600,000) PESOS representing the cost of the two improvements constructed on the remaining portion of the [petitioners'] lot.
>
> b. The sum of THREE HUNDRED THOUSAND PESOS (₱300,000) PESOS representing the adjusted cost of the two improvements likewise constructed by [respondent][,] possession of which was terminated two and a half years before the stipulated term of five (5) years.
>
> c. The sum of TEN THOUSAND (₱10,000) PESOS as and by way of attorney's fees.
>
> SO ORDERED.[8]

Petitioners elevated the case to the CA. There, petitioners argued that the RTC erred in (1) denying their claim for payment of rentals both for the unexpired period of the lease and for the portions of the property used by respondent which was not covered by his lease contract and (2) granting respondent's counterclaim although they did not allow the construction of the buildings. Petitioners likewise contended the trial court disregarded the parol evidence rule[9] which disallowed the court

---

[8] Decided by Judge Severino B. De Castro, *id.*, pp. 45-46.

[9] Rule 130, Section 9 of the Rules of Court:

> Section 9. *Evidence of written agreements.* — When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

from looking into any other evidence relating to the agreement of the parties outside the written contract between them.

In its assailed decision, the CA affirmed the RTC's decision and dismissed petitioners' appeal. It held that:

(1) petitioners did not adduce evidence to prove that respondent had actually occupied portions of their property not covered by his contract;

(2) petitioners could not insist that respondent pay the remaining period under the contract since they were the ones who demanded that respondent vacate the premises and

(3) the rule on parol evidence could no longer apply after they failed to object to respondent's testimony (in the lower court) about their agreement regarding the construction of the buildings.[10]

Petitioners filed a motion for reconsideration but it was denied.[11] Hence, this petition.[12]

In support of this petition, petitioners essentially argue that the CA erred in ruling that: (1) they consented to the construction of the buildings by respondent; (2) they waived their right to respondent's assertion of facts that were not embodied in the lease contract and (3) respondent was not a builder in bad faith.[13]

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" shall include wills.

[10] CA Decision, *supra*.

[11] Resolution dated February 22, 2006. *Rollo*, pp. 38-39.

[12] *Id.*, pp. 9-26.

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

PETITIONERS ALLOWED THE CONSTRUCTION OF THE BUILDINGS

Petitioners' first argument necessitates a review of the facts of the case which, as a general rule, is not the task of this Court. Under Rule 45 of the Rules, this Court shall not pass upon the findings of fact by lower courts unless they ignored salient points that would otherwise affect the outcome of the case.[14] There is no reason for us to overturn the factual conclusions of the lower courts.

Moreover, the lower courts' findings of fact were supported by the records of the case which indubitably showed petitioners' acquiescence to the construction of the buildings on their property. Petitioners' denial cannot negate the overwhelming proof that it was petitioner Wilfredo Amoncio himself who secured the building permit for the project. He also required that all design specifications were to be approved by him.[15]

APPLICATION OF THE PAROL EVIDENCE RULE

Rule 130, Section 9 of the Rules of Court provides:

Section 9. *Evidence of written agreements.* — When the terms of the agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors, no evidence of such terms other than the contents of the written agreement.

x x x x x x x x x

[14] *Bulay-og v. Bacalso*, G.R. No. 148795, 17 July 2006, 495 SCRA 308. Other grounds allowing review of facts: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; 2) the interference made is manifestly mistaken; 3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension; 5) the findings of facts are conflicting; 6) the appellate court went beyond the issues of the case and its findings are contrary to the admission of both the appellant and the appellee; 7) the findings of facts of the CA are conclusions without citation of specific evidence on which they are based; 8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and, 9) the findings of fact of the CA are premised on the supposed absence of evidence on record.

[15] *Supra* at note 3.

The so-called "parol evidence" forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other terms were orally agreed on by the parties.[16] Under the aforecited rule, the terms of the written contract are conclusive upon the parties and evidence *aliunde* is inadmissible to vary an enforceable agreement embodied in the document. However, the rule is not absolute and admits of exceptions:

x x x x x x x x x

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" shall include wills.

The first exception applies when the ambiguity or uncertainty is readily apparent from reading the contract. The wordings are so defective that what the author of the document intended to say cannot be deciphered.[17] It also covers cases where the parties commit a mutual mistake of fact,[18] or where the document is manifestly incomplete as the parties do not intend to exhibit the whole agreement but only to define some of its terms.[19]

The second exception includes instances where the contract is so obscure that the contractual intention of the parties cannot

---

[16] *EVIDENCE* by Ricardo J. Francisco, 1996 Third Edition, Rex Printing Company, Inc., Philippines, p. 84.

[17] *Id.*, pp. 92-93.

[18] *Id.*, p. 94.

[19] *Id.*, p. 95.

be understood by mere inspection of the instrument.[20] Thus, extrinsic proof of its subject matter, of the relation of the parties and of the circumstances surrounding them when they entered into the contract may be received as evidence.[21]

Under the third exception, the parol evidence rule does not apply where the purpose of introducing the evidence is to show the invalidity of the contract.[22] This includes cases where a party alleges that no written contract ever existed, or the parties fail to agree on the terms of the contract, or there is no consideration for such agreement.[23]

The fourth exception involves a situation where the due execution of the contract or document is in issue.[24]

The present case does not appear to fall under any of the given exceptions. *However, a party to a contract may prove the existence of any separate oral agreement as to any matter which is not inconsistent with its terms*.[25] *This may be done if, from the circumstances of the case, the court believes that the document does not convey entirely the whole of the parties' transaction*.[26]

In this case, there are tell-tale signs that petitioners and respondent had other agreements aside from those established by the lease contract. And we find it difficult to ignore them. We agree with the trial court:

… [T]hat [respondent], indeed, undertook the construction subject hereof, is not disputed by [petitioners]. [Respondent] testified that two units thereof were intended for [petitioners], another two units

---

[20] *Id*. p. 96.

[21] *Id*.

[22] *Id*., p. 102.

[23] *Id*.

[24] *Id*., p. 99.

[25] *Id*., p. 100.

[26] *Id*.

for him and one for … Garcia at the cost of ₱300,000.00 per unit or for a total budget of ₱1.5 million.

Evidence further disclosed that the [b]uilding [p]ermit issued therefor by the Building Official bore the signature of [petitioner] Wilfredo Amoncio . . .

. . . the Court cannot be unmindful of [petitioner Wilfredo Amoncio's denial by any knowledge of the whole construction undertaken by herein [respondent.] But it is evident that [petitioners] have chosen to adopt inconsistent positions which, by applicable jurisprudence, [are] barred. Said the Court in this regard:

> The doctrine of estoppel prohibits a party from assuming inconsistent position based on the principle of election, and precludes him from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity and would put a premium on fraud and misrepresentation . . .[27]

Moreover, petitioners also failed to make a timely objection against respondent's assertion of their prior agreement on the construction of the buildings. Where a party entitled to the benefit of the parol evidence rule allows such evidence to be received without objection, he cannot, after the trial has closed and the case has been decided against him, invoke the rule in order to secure a reversal of the judgment.[28] Hence, by failing to object to respondent's testimony in the trial court, petitioners waived the protection of the parol evidence rule.[29]

PAYMENT OF RENTAL

Petitioners demand the payment of the following: (1) rent from December 19, 1999 to June 8, 2000;[30] (2) rent for the unexpired period of the lease or until August 2002[31] and (3) rent corresponding to the portions of the property used by respondent

---

[27] RTC Decision, *supra*.

[28] *Id.*, p. 88.

[29] See also *Willex Plastic Industries, Corp. v. CA*, 326 Phil. 489 (1996).

[30] Date when respondent vacated his leased portion.

[31] See note at 6.

which, according to petitioners, were not covered by his lease contract.[32]

Pursuant to the lease agreement, respondent paid three months advance and three months deposit (at the inception of the lease contract), in effect already settling his rentals for six months from December 1999 to June 8, 2000. The CA correctly ruled:

> While [respondent] stopped paying rentals in December 1999 and left before June 8, 2000, a period covering six (6) months, [respondent], nonetheless, had already paid [petitioners] the amount equivalent to six (6) months rentals [advance payment equivalent to three (3) monthly rentals plus deposit equivalent to [another] three (3) monthly rentals]. . .[33] (emphasis supplied)

Regarding petitioners' second claim (rent for the unexpired period of lease), we agree with the lower courts that they (petitioners) are not entitled to it.

Without doubt, petitioners already benefited immensely from the construction of the five buildings on their property. The amount of their claim is a pittance compared to the increase in value of their property over the years. It would unjustly enrich them if we were to rule in their favor considering that they did not spend a single centavo for the construction of the buildings. It was respondent who financed the entire project which, however, was taken over completely by petitioners.

As a rule, the contract is the law between the parties that must be enforced in *sensu strictione*. However, it cannot be done under the circumstances of this case. To do so would result in a patently unjust juridical situation. We, as a court not only of justice but of equity as well, may exercise our *equitas jurisdictio* to refine the rough edges of the rule and avoid injustice.[34]

---

[32] Those pertaining to Garcia's 120 sq. m. portion and the 120 sq. m. portion not covered by either respondent's or Garcia's lease contracts.

[33] *Rollo*, p. 36.

[34] *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures Inc.*, G.R. No. 143154, 21 June 2006, 491 SCRA 557.

Lastly, petitioners' claim for rental payment for the portions (not covered by respondent's lease contract) must be dismissed. This claim was never substantiated.

PETITIONERS' LIABILITY TO RESPONDENT

What remains to be resolved is petitioners' liability to respondent, as held by both the RTC and the CA. Were petitioners indeed liable to respondent for the cost of the buildings constructed on their property? Yes.

Since the trial court allowed respondent's testimony as evidence of the parties' prior agreement (regarding the construction of the buildings and the cost thereof), petitioners should pay respondent. Petitioners never disputed the construction of the two buildings given to them. If one of the contracting parties derived some benefit but did not give anything for it to the other, it is only fair that he should return the amount by which he was unjustly enriched.[35] Equity dictates that petitioners be held liable for the expenses incurred by respondent in constructing the buildings that went to them. No man ought to be enriched by another's injury.[36] *Nemo ex alterius incommonde debet lecupletari.*

Finally, following our ruling that petitioners knew of the construction of the buildings, any discussion on the issue of whether respondent was a builder in bad faith is no longer necessary.

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. CV No. 79341 is hereby *AFFIRMED*.

Treble costs against petitioners.

SO ORDERED.

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

---

[35] *Id*.; *Hulst v. PR Builders*, G.R. No. 156364, 3 September 2007.

[36] *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures Inc. Id*.

SECOND DIVISION

[G.R. No. 171729. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RICARDO BOHOL *y* CABRINO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST, WHEN LAWFUL; AN ARREST MADE AFTER AN ENTRAPMENT OPERATION DOES NOT REQUIRE A WARRANT. — The arrest of Bohol is legal. The Constitution proscribes unreasonable arrests and provides in the Bill of Rights that no arrest, search and seizure can be made without a valid warrant issued by competent judicial authority. However, it is a settled exception to the rule that an arrest made after an entrapment operation does not require a warrant. Such warrantless arrest is considered reasonable and valid under Rule 113, Section 5(a) of the Revised Rules on Criminal Procedure.

2. ID.; ID.; SEARCH AND SEIZURE; WARRANTLESS SEARCH AND SEIZURE; WHEN ALLOWED. — Considering the legality of Bohol's warrantless arrest, the subsequent warrantless search that resulted in the seizure of the *shabu* found in his person is likewise valid. In a legitimate warrantless arrest, the arresting police officers are authorized to search and seize from the offender (1) any dangerous weapons and (2) the things which may be used as proof of the commission of the offense. The constitutional proscription against warrantless searches and seizures admits of certain exceptions. This Court has ruled that the following instances constitute valid warrantless searches and seizures: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of the evidence in plain view; (5) search when the accused himself waives his right against unreasonable searches and seizures; (6) stop and frisk; and (7) exigent and emergency circumstances.

3. ID.; EVIDENCE; PRESUMPTIONS; IN ENTRAPMENT CASES, CREDENCE IS GIVEN TO THE NARRATION OF AN INCIDENT BY PROSECUTION WITNESSES WHO ARE

OFFICERS OF THE LAW AND PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY. — This Court discerns no improper motive on the part of the police officers that would impel them to fabricate a story and falsely implicate Bohol in such a serious offense. In the absence of any evidence of the policemen's improper motive, their testimony is worthy of full faith and credit. Also, courts generally give full faith and credit to officers of the law, for they are presumed to have performed their duties in a regular manner. Accordingly, in entrapment cases, credence is given to the narration of an incident by prosecution witnesses who are officers of the law and presumed to have performed their duties in a regular manner in the absence of clear and convincing evidence to the contrary.

4. ID.; ID.; CREDIBILITY OF WITNESSES; EVALUATION OF THE TESTIMONIES OF WITNESSES BY THE TRIAL COURT IS ENTITLED TO THE HIGHEST RESPECT. — The settled rule is that the evaluation of the testimonies of witnesses by the trial court is entitled to the highest respect because such court has the direct opportunity to observe the witnesses' demeanor and manner of testifying and thus, is in a better position to asses their credibility.

5. ID.; CRIMINAL PROCEDURE; WHAT IS MATERIAL TO THE PROSECUTION FOR THE ILLEGAL SALE OF DANGEROUS DRUGS IS THE PROOF THAT THE TRANSACTION OR SALE ACTUALLY TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI*. — [W]hat is material to the prosecution for the illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. Both requirements were sufficiently proven in this case. The police officers were able to testify positively and categorically that the transaction or sale actually took place. The subject *shabu* was likewise positively identified by the prosecution when presented in court. Hence, we agree that Bohol's guilt has been established by the prosecution beyond reasonable doubt.

6. CRIMINAL LAW; INDETERMINATE SENTENCE LAW; PENALTY IN CASE AT BAR. — Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by

a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same." Hence, the penalty originally imposed by the RTC of imprisonment from 12 years and 1 day, as minimum, to 15 years as maximum, and to pay a fine of ₱300,000 is correct and must be sustained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated September 23, 2005 of the Court of Appeals in CA-G.R. CR-HC No. 01247 affirming the Decision[2] dated March 7, 2003 of the Regional Trial Court (RTC) of Manila, Branch 35, in Criminal Cases Nos. 02-205461 and 02-205462. The RTC had convicted appellant Ricardo Bohol (Bohol) of violating Sections 11 (3)[3] and

[1] CA *rollo*, pp. 93-101. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Japar B. Dimaampao concurring.

[2] *Id*. at 15-22. Penned by Judge Ramon P. Makasiar.

[3] SEC. 11. *Possession of Dangerous Drugs.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four

5,[4] Article II, respectively, of Republic Act No. 9165[5] also known as the Comprehensive Dangerous Drugs Act of 2002.

On August 7, 2002, two Informations[6] were filed against Bohol before the RTC of Manila, Branch 35, for violations of Rep. Act No. 9165.

In Criminal Case No. 02-205461, involving the violation of Section 11 (3), Article II of Rep. Act No. 9165, the information reads as follows:

That on or about August 2, 2002, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets containing white crystalline substance commonly known as "*shabu*" weighing zero point zero four eight (0.048) gram, zero point zero three five (0.035) gram,

---

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.

[4] 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.

x x x x x x x x x

[5] 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.

[6] CA *rollo*, pp. 6-7.

and zero point zero three five (0.035) gram, respectively, which, after a laboratory examination, gave positive results for methylamphetamine (sic) hydrochloride, a dangerous drug.

CONTRARY TO LAW.[7]

In Criminal Case No. 02-205462, for violation of Section 5 of the same law, the information reads as follows:

That on or about August 2, 2002, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, administer, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or attempt to sell, or offer for sale for ₱100.00 and deliver to PO2 Ferdinand Estrada, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance commonly known as "shabu" weighing zero point zero five four (0.054) gram, which substance, after a qualitative examination, gave positive results for methamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW.[8]

The antecedent facts in these cases are as follows.

On August 2, 2002, at around 8:30 p.m., a confidential informant came to the police station and tipped P/Sr. Insp. Jessie Nitullano that a certain Ricardo Bohol is engaged in illegal drug trade in Isla Puting Bato, Tondo, Manila. P/Sr. Insp. Nitullano then formed a team of six police operatives to verify the informant's tip, and, if found positive, to launch then and there a buy-bust entrapment of Bohol. PO2 Ferdinand Estrada was assigned to act as poseur buyer, and he was provided with a marked ₱100-bill as buy-bust money.

Between 9:30 p.m. to 10:00 p.m. of the same day, the team proceeded to the site of their operation. Guided by the informant, PO2 Estrada proceeded to the house of Bohol, whom they saw standing beside the stairs of his house. Following a short introduction, PO2 Estrada and the informant told Bohol of their

---

[7] *Id*. at 6.

[8] *Id*. at 7.

purpose. Bohol asked, "How much?" to which PO2 Estrada replied, "*Piso lang*" (meaning ₱100 worth of *shabu*) and handed to the former the marked ₱100-bill. In turn, Bohol gave PO2 Estrada a plastic sachet containing white crystalline granules which the latter suspected to be *shabu*. The illicit transaction having been consummated, PO2 Estrada gave to his companions their pre-arranged signal. Emerging from their hiding places, PO2 Luisito Gutierrez and his companions arrested Bohol. PO2 Gutierrez frisked Bohol and recovered from him the buy-bust money and three plastic sachets containing similar white crystalline granules suspected to be *shabu*.

Consequently, the police officers brought Bohol to the police station and the confiscated four plastic sachets of white crystalline substance were subjected to laboratory examination. The specimens were confirmed to be methamphetamine hydrochloride, commonly known as *shabu*.

Upon arraignment, Bohol entered a plea of "not guilty" to both charges. Thereafter, trial on the merits ensued.

On March 7, 2003, the trial court rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, judgment is rendered:

(1) In Criminal Case No. 02-205461, pronouncing accused RICARDO BOHOL *y* CABRINO guilty beyond reasonable doubt of possession of a total of 0.118 gram of [methamphetamine] hydrochloride without authority of law, penalized under Section 11 (3) of Republic Act No. 9165, and sentencing the said accused to the indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of ₱300,000.00, plus the costs.

(2) In Criminal Case No. 02-205462, pronouncing the same accused RICARDO BOHOL *y* CABRINO guilty beyond reasonable doubt of selling 0.054 gram of [methamphetamine] hydrochloride without authority of law, penalized under Section 5 of the same Republic Act No. 9165, and sentencing the said accused to life imprisonment and to pay a fine of ₱5,000,000.00, plus the costs.

In the service of his sentence in Criminal Case No. 02-205461, the time during which the accused had been under preventive imprisonment should be credited in his favor provided that he had agreed voluntarily in writing to abide with the same disciplinary rules imposed on convicted prisoner. Otherwise, he should be credited with four-fifths (4/5) only of the time he had been under preventive imprisonment.

Exhibits B and B-1, consisting of four sachets of shabu, are ordered forfeited and confiscated in favor of the Government. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court is ordered to turn over, under proper receipt, the drug involved in this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.[9]

Since one of the penalties imposed by the trial court is life imprisonment, the cases were forwarded to this Court for automatic review. On June 15, 2005, this Court transferred the cases to the Court of Appeals for intermediate review pursuant to this Court's decision in *People v. Mateo*.[10]

In a Decision dated September 23, 2005, the Court of Appeals denied the appeal and affirmed the decision of the trial court with modification, so that the penalty in Criminal Case No. 02-205461 should be imprisonment for 12 years, as minimum, to 14 years, 8 months and 1 day, as maximum. Bohol's Motion for Reconsideration was likewise denied by the appellate court. Thus, Bohol filed a notice of appeal.

By Resolution[11] dated June 14, 2006, this Court required the parties to file their respective supplemental briefs if they so desire. Bohol and the Office of the Solicitor General (OSG), however, manifested that they are adopting their briefs before the appellate court. Hence, we shall resolve the instant appeal on the basis of the arguments of the parties in said briefs.

---

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

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[11] *Rollo*, p. 12.

In his appellant's brief, Bohol assigns the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[12]

Simply stated, the issues are: (1) whether Bohol's arrest and the search on his person were illegal; and (2) whether the trial court erred in convicting Bohol despite the absence of proof beyond reasonable doubt.

On the first issue, Bohol claims that his arrest was illegal since he could not have committed, nor was he about to commit, a crime as he was peacefully sleeping when he was arrested without a warrant. Consequently, the search conducted by the police officers was not incidental to a lawful warrantless arrest, and the confiscated *shabu* obtained from the search was inadmissible as evidence against him.

For the appellee, the OSG maintains that the arrest of Bohol as well as the search on his person is legal. The OSG stresses that the search made on the person of Bohol was incidental to a lawful arrest which was made when he was caught in *flagrante delicto*. Further, the OSG maintains that at the time of Bohol's arrest, the police officers had probable cause to suspect that a crime had been committed since they had received a tip from a confidential informant of the existence of illegal drug trade in the said place.

Bohol's arguments are bereft of merit.

The arrest of Bohol is legal. The Constitution proscribes unreasonable arrests and provides in the Bill of Rights that no arrest, search and seizure can be made without a valid warrant

[12] CA *rollo*, p. 49.

issued by competent judicial authority.[13] However, it is a settled exception to the rule that an arrest made after an entrapment operation does not require a warrant. Such warrantless arrest is considered reasonable and valid under Rule 113, Section 5(a) of the Revised Rules on Criminal Procedure, which states:

Sec. 5. *Arrest without warrant; when lawful.*— A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

x x x x x x x x x

In the present case, the arresting officers were justified in arresting Bohol as he had just committed a crime when he sold the *shabu* to PO2 Estrada. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.

Considering the legality of Bohol's warrantless arrest, the subsequent warrantless search that resulted in the seizure of the *shabu* found in his person is likewise valid. In a legitimate warrantless arrest, the arresting police officers are authorized to search and seize from the offender (1) any dangerous weapons and (2) the things which may be used as proof of the commission of the offense.[14] The constitutional proscription against warrantless searches and seizures admits of certain exceptions. This Court has ruled that the following instances constitute valid warrantless searches and seizures: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of the evidence in plain view; (5) search

---

[13] CONSTITUTION, Art. III,

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[14] *People v. Ayangao*, G.R. No. 142356, April 14, 2004, 427 SCRA 428, 433.

when the accused himself waives his right against unreasonable searches and seizures; (6) stop and frisk; and (7) exigent and emergency circumstances.[15]

As to the second issue, Bohol contends that the prosecution failed to establish his guilt beyond reasonable doubt. He faults the trial court for giving full faith and credence to the testimonies of the prosecution witnesses. He asserts that the only reason why he was arrested was because he was the overseer of a "video-carrera." The police officers filed the illegal drug trade and possession against him because they failed to find any evidence to have him tried for overseeing a "video-carrera" place. Lastly, he laments the failure of the prosecution to present the confidential informant as a witness during the trial, thereby preventing him from confronting said witness directly.

The OSG counters that the prosecution established Bohol's guilt beyond reasonable doubt. The police officers who testified against Bohol were not shown to have been actuated by improper motives, nor were they shown not properly performing their duty. Thus, their affirmative testimony proving Bohol's culpability must be respected and must perforce prevail. Moreover, the findings of the trial court on the issue of credibility of witnesses are generally not disturbed by the appellate court and this Court, since it is the trial court that had the opportunity to appraise firsthand the demeanor of the witness.

We agree with the OSG. This Court discerns no improper motive on the part of the police officers that would impel them to fabricate a story and falsely implicate Bohol in such a serious offense. In the absence of any evidence of the policemen's improper motive, their testimony is worthy of full faith and credit. Also, courts generally give full faith and credit to officers of the law, for they are presumed to have performed their duties in a regular manner. Accordingly, in entrapment cases, credence is given to the narration of an incident by prosecution witnesses who are officers of the law and presumed to have performed

---

[15] *Epie, Jr. v. Ulat-Marredo*, G.R. No. 148117, March 22, 2007, 518 SCRA 641, 646.

their duties in a regular manner in the absence of clear and convincing evidence to the contrary.[16]

Moreover, we find no cogent reason to disturb the findings of the trial court. The settled rule is that the evaluation of the testimonies of witnesses by the trial court is entitled to the highest respect because such court has the direct opportunity to observe the witnesses' demeanor and manner of testifying and thus, is in a better position to assess their credibility.[17]

Lastly, as ruled by the appellate court, Bohol cannot insist on the presentation of the informant. During trial, the informant's presence is not a requisite in the prosecution of drug cases. The appellate court held that police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Further, what is material to the prosecution for the illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. Both requirements were sufficiently proven in this case. The police officers were able to testify positively and categorically that the transaction or sale actually took place. The subject *shabu* was likewise positively identified by the prosecution when presented in court. Hence, we agree that Bohol's guilt has been established by the prosecution beyond reasonable doubt.

Finally, the modification made by the Court of Appeals in the penalty imposed by the RTC in Criminal Case No. 02-205461 ought to be deleted. Section 1 of the Indeterminate Sentence Law[18]

---

[16] *People v. Ambrosio*, G.R. No. 135378, April 14, 2004, 427 SCRA 312, 332, citing *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684, 692.

[17] *Aclon v. Court of Appeals*, G.R. Nos. 106880 & 120190, August 20, 2002, 387 SCRA 415, 425.

[18] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES, approved and effective on December 5, 1933 (Act No. 4103, as amended).

provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same." Hence, the penalty originally imposed by the RTC of imprisonment from 12 years and 1 day, as minimum, to 15 years as maximum, and to pay a fine of ₱300,000 is correct and must be sustained.

WHEREFORE, the appeal is *DENIED*. The Decision dated September 23, 2005 of the Court of Appeals in CA-G.R. CR-HC No. 01247 is hereby *AFFIRMED with MODIFICATION*, so that the orinal penalty imposed in the Decision dated March 7, 2003 of the Regional Trial Court of Manila, Branch 35, in Criminal Case No. 02-205461 as well as No. 02-205462 is *SUSTAINED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172869. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DONATO BULASAG *y* ARELLANO *alias* "DONG,"** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IDENTIFICATION BY THE SOUND OF THE VOICE AND FAMILIARITY WITH THE PHYSICAL FEATURES OF A PERSON ARE SUFFICIENT AND ACCEPTABLE MEANS OF IDENTIFICATION; CASE AT BAR. — The evidence on record shows that appellant and Estelita have been neighbors

for quite some time. In fact, their families were so close that appellant even allowed Estelita to tap electrical connection from his house. Thus, although appellant wore a bonnet over his face to conceal his identity, Michael could still recognize his voice since Michael already gained familiarity with his voice and physical features. In fact, Michael described appellant's voice as "low tone." As this Court has ruled in earlier cases, identification by the sound of the voice as well as familiarity with the physical features of a person are sufficient and acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years.

2. ID.; ID.; ID.; WHEN THERE IS NO EVIDENCE TO INDICATE THAT THE WITNESS AGAINST THE ACCUSED HAS BEEN ACTUATED BY ANY IMPROPER MOTIVE, AND ABSENT ANY COMPELLING REASON TO CONCLUDE OTHERWISE, THE TESTIMONY GIVEN BY A WITNESS IS ORDINARILY ACCORDED FULL FAITH AND CREDIT. — Taking into account all the circumstances of this case, this Court finds credible and sufficient Michael's identification of appellant as the perpetrator of the crime. When there is no evidence to indicate that the witness against the accused has been actuated by any improper motive, and absent any compelling reason to conclude otherwise, the testimony given by a witness is ordinarily accorded full faith and credit.

3. ID.; ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY OF THE WITNESS; ALIBI, WHEN TO PROSPER AS A DEFENSE. — Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution because it can easily be fabricated. For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission. Appellant's own evidence shows that he was in the immediate environs when the incident occurred.

For he stated that he was just in his own house, barely three meters away from the house of the victim, Estelita.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated January 13, 2006 of the Court of Appeals in CA-G.R. CR.–H.C. No. 00183, which had affirmed the Decision[2] dated May 10, 2004 of the Regional Trial Court (RTC), Branch 9, Balayan, Batangas. The trial court had found appellant Donato Bulasag *y* Arellano *alias* "Dong," guilty of the special complex crime of robbery with homicide in Criminal Case No. 4850.

The Information dated December 22, 2000, charging appellant and his co-accused with the special complex crime of robbery with homicide, defined and penalized under Article 294(1)[3] of the Revised Penal Code, as amended by Republic Act No. 7659,[4] reads as follows:

---

[1] *Rollo*, pp. 2-14. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso concurring.

[2] Records, pp. 170-183. Penned by Executive Judge Elihu A. Ybañez.

[3] Art. 294. *Robbery with violence against or intimidation of persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson;

x x x x x x x x x

[4] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

x x x x x x x x x

That on or about the 27th day of July, 2000 at about 10:30 o'clock in the evening, at Barangay Caloocan, Municipality of Balayan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, accused, Donato Bulasag armed with an unlicensed firearm of unknown caliber together with one John Doe and one Peter Doe whose identities and whereabouts are still unknown, armed with knives (*kutsilyo*), conspiring and confederating together, acting in common accord and mutually helping one another, with intent to gain and without the knowledge and consent of the owner thereof did then and there willfully, unlawfully and feloniously enter the house owned by Estelita Bascuguin *y* Besas and by means of violence or intimidation against person, take, rob and carry away cash money amounting to more or less Twenty Thousand Pesos (₱20,000.00), Philippine Currency and assorted pieces of jewelry, to the damage and prejudice of the said owner in the aforementioned amount of ₱20,000.00 and that on the occasion and by reason of the said robbery, the said accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault[,] stab and shoot with the said weapons one Estelita Bascuguin *y* Besas, thereby inflicting upon the latter gunshot wounds and stab wounds on her chest, which directly caused her death.

Contrary to law.[5]

Only appellant was arrested by the police authorities while the others remained at large. Upon arraignment, appellant pleaded not guilty.

The facts as found by the trial court and confirmed by the Court of Appeals, were gleaned from the testimonies of (1) Lydia B. Siervo, the sister of the victim Estelita B. Bascuguin; (2) Michael B. Bascuguin, the eight-year-old son of the victim; and (3) Dr. Antonio S. Vertido, Regional Medico-Legal Officer of the National Bureau of Investigation, Region 4, Batangas.

Lydia Siervo testified that one week before the incident, Estelita told her that she had an altercation with the appellant. Appellant tried to borrow ₱3,000 but Estelita refused to give him the money. As a result, appellant threatened Estelita that something

[5] Records, pp. 1-2.

bad will happen to her if she will not leave her house. Lydia added that Estelita had no misunderstanding with other people except the appellant.[6]

Michael Bascuguin testified that at around 10:30 p.m. of July 27, 2000, he was watching television inside their house with his mother and cousin, Luisito Besas. When his mother was about to close the door of their house, the lights suddenly went off and somebody kicked the door open. Three men wearing bonnets over their faces entered their house. One man, later identified as the appellant, had a gun while another carried a kitchen knife. Together they held Estelita. Although Michael tried to get out of the house, appellant chased and hogtied him. Appellant then demanded money from Estelita threatening to kill Michael if she refused. Estelita gave appellant an undetermined amount of money. Since appellant refused to release Michael, Estelita ran out of the house and told Michael to run also. Appellant shot Estelita while one of his companions stabbed her. Thereafter, appellant and his companions fled. Michael sought help from their neighbor, Jenneath, the appellant's wife, but she initially refused since there was no available vehicle. Later, they found a vehicle and went to the house of *Tatay* Pecto, Estelita's common-law husband, and informed him of what happened to Estelita. They then proceeded to the police station to report the incident.[7]

Dr. Antonio S. Vertido testified and confirmed his findings as stated in the Certificate of Post-Mortem Examination[8] that Estelita died of gunshot and stab wounds on the chest.[9]

Appellant Donato Bulasag denied the accusations against him. He testified that on the date of the incident, he attended the birthday celebration of his nephew, Jorge Bautista. They started drinking at 10:00 a.m. At 7:00 p.m., he and Hilario Arellano left his nephew's house and proceeded to the house of his uncle,

---

[6] TSN, April 24, 2002, pp. 4-6; TSN, May 7, 2002, pp. 3, 5, 8-9.

[7] TSN, July 24, 2002, pp. 4-7, 9-11.

[8] Records, p. 9.

[9] TSN, January 29, 2003, pp. 5, 7-10.

Rolando Holgado, to continue drinking. They stayed there for 30 minutes until his wife, Jenneath, arrived to fetch him. Instead of going home, they went to his parents' house. Between 8:00 p.m. to 9:00 p.m., his brother Filomeno and his wife Anita brought them home. Upon arriving home, he slept.[10]

Jenneath Bulasag testified that at the time of the incident, appellant was at home sleeping. She said that appellant was drunk at that time after attending his nephew's birthday celebration. She claimed that she never lost sight of him that evening.[11]

On May 10, 2004, the trial court convicted appellant. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Court finds the accused Donato Bulasag *y* Arellano *alias* "Dong" **GUILTY** beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294(1) of the Revised Penal Code, as amended by Republic Act [No.] 7659, and is hereby sentenced to suffer the indeterminate penalty of *reclusion perpetua*, with the accessory penalties and to pay the costs. He is also hereby ordered to pay the heirs of Estelita Bascuguin *y* Besas the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) as indemnity in line with current jurisprudence.
>
> IT IS SO ORDERED.[12]

Appellant filed a notice of appeal. On January 13, 2006, the Court of Appeals affirmed the Decision of the trial court. It observed that all the elements of the crime of robbery with homicide were present in the case. It noted that appellant's identity was duly established by Michael's positive identification, hence it disregarded appellant's denial and alibi.

Dissatisfied, appellant appealed to this Court. As appellant and the Office of the Solicitor General opted not to submit supplemental briefs, we shall now review the decision of the

---

[10] TSN, February 5, 2003, pp. 6-10, 13.

[11] TSN, February 12, 2003, pp. 3-4, 8.

[12] Records, p. 183.

Court of Appeals, focusing on the following issues brought before it:

I.

THE TRIAL COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.

II.

THE TRIAL COURT *A QUO* GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE ACCUSED-APPELLANT'S ALIBI.

III.

THE TRIAL COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAD ESTABLISHED BEYOND REASONABLE DOUBT THE IDENTITY OF THE ACCUSED-APPELLANT AS THE AUTHOR OF THE CRIME CHARGED.[13]

Briefly stated, the principal issue is whether the guilt of appellant was proved by the prosecution beyond reasonable doubt. Subsidiarily, for our resolution are: (1) Did the prosecution sufficiently prove appellant's identity as the author of the crime? (2) Did the trial court err in disregarding appellant's denial and alibi?

Appellant contends that his identity was proven only by circumstantial evidence. Michael did not see the face of the man who chased him and shot his mother because the man wore a bonnet over his face. Thus, there was doubt whether the man was really appellant or somebody else. While Michael testified that he recognized appellant's voice, physical features and gun, he also admitted that he did not talk often with him. There was doubt therefore whether he was in a position to identify appellant's voice during the incident. Appellant insists that he was so drunk at the time of the incident that it was impossible for him to commit the crime. He contends that his wife corroborated his testimony.

---

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

Appellee counters that appellant's identity was sufficiently established. Although appellant wore a bonnet over his face, Michael was able to identify his voice, physical features and the gun used. Michael was familiar with appellant's voice and physical features since they have been neighbors for quite some time before the incident. In fact, their families were so close that appellant even allowed Estelita to tap electrical connection from his house. Michael was also able to identify appellant by means of his gun because he has previously seen appellant carry it three times before the incident. The witness stated that he saw appellant fire it once in front of their house. Appellee discredits appellant's alibi since it was not physically impossible for him to be at the crime scene. Additionally, appellee contends that appellant's testimony was corroborated insufficiently since only his wife, who was obviously a biased witness, did so.

After weighing the parties' conflicting testimonies and other evidence, we are in agreement that there is no reason to reverse appellant's conviction.

First, we find Michael's testimony consistent to the minutest detail, and his categorical identification of appellant as the assailant is unwavering. Also we see no reason to doubt his credibility.

The evidence on record shows that appellant and Estelita have been neighbors for quite some time. In fact, their families were so close that appellant even allowed Estelita to tap electrical connection from his house.[14] Thus, although appellant wore a bonnet over his face to conceal his identity, Michael could still recognize his voice since Michael already gained familiarity with his voice and physical features. In fact, Michael described appellant's voice as "low tone."[15]

As this Court has ruled in earlier cases, identification by the sound of the voice[16] as well as familiarity with the physical

---

[14] TSN, February 5, 2003, p. 14.

[15] TSN, July 24, 2002, p. 13.

[16] *People v. Prieto*, G.R. No. 141259, July 18, 2003, 406 SCRA 620, 631.

features[17] of a person are sufficient and acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years.

Noteworthy, Michael was able to recognize the gun used by the malefactor. Michael testified that he had previously seen appellant carry it three times before the incident. He also saw appellant fire the gun once in front of their house.[18] Worth stressing, appellant never denied ownership or possession of such gun.

Taking into account all the circumstances of this case, this Court finds credible and sufficient Michael's identification of appellant as the perpetrator of the crime. When there is no evidence to indicate that the witness against the accused has been actuated by any improper motive, and absent any compelling reason to conclude otherwise, the testimony given by a witness is ordinarily accorded full faith and credit.[19]

Second, we find appellant's defenses founded on denial and alibi lacking in truth and candor. Despite his stance that he went to his nephew's birthday celebration where he met with several persons to drink gin on the day of the incident, appellant failed to present any disinterested witness to support his claim. Thus, for corroboration we are left to rely only on the testimony of his wife, which we find less than convincing.

Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution because it

---

[17] *People v. Arellano*, G.R. No. 131518, October 17, 2000, 343 SCRA 276, 286.

[18] TSN, July 24, 2002, p. 7.

[19] *People v. Avendaño*, G.R. No. 137407, January 28, 2003, 396 SCRA 309, 324.

can easily be fabricated.[20] For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.[21] Appellant's own evidence shows that he was in the immediate environs when the incident occurred. For he stated that he was just in his own house, barely three meters away from the house of the victim, Estelita.[22]

WHEREFORE, the appeal is *DENIED*. The Decision dated January 13, 2006 of the Court of Appeals in CA-G.R. CR.–H.C. No. 00183, which had sustained the Decision dated May 10, 2004 of the Regional Trial Court, Branch 9, Balayan, Batangas, finding appellant Donato Bulasag y Arellano *alias* "Dong" guilty of the special complex crime of robbery with homicide in Criminal Case No. 4850, is *AFFIRMED*. Costs against appellant.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172974. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CESAR ARENAS,** *appellant.*

---

[20] *People v. Penaso*, G.R. No. 121980, February 23, 2000, 326 SCRA 311, 320.

[21] *People v. Fernandez*, G.R. No. 134762, July 23, 2002, 385 SCRA 38, 51.

[22] TSN, February 5, 2003, p. 14.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE CATEGORICAL TESTIMONY OF THE WITNESSES. — Both the trial and appellate courts ruled that appellant's denial and alibi were not worthy of belief. Instead, both courts gave credence to the testimony of the eyewitnesses of the prosecution. They categorically pointed to appellant as the one who shot the victim in the head.

2. CRIMINAL LAW; MURDER; TREACHERY; NO OPPORTUNITY WAS AFFORDED TO THE VICTIM TO DEFEND HIMSELF. — The eyewitnesses testified that the shooting was carried out treacherously (that is, from behind the victim), thus affording him no opportunity to defend himself. For this reason, both the trial and appellate courts found that appellant's guilt for the crime of murder was sufficiently established beyond reasonable doubt. This Court finds no compelling reason to rule otherwise.

3. ID.; ID.; PENALTY. — Pursuant to Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (RA) 7659, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* and to suffer all its accessory penalties.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CORONA, *J.*:

This is an appeal from the March 30, 2006 decision[1] of the Court of Appeals in CA-G.R. CR No. 00671 affirming with

[1] Penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Mariflor P. Punzalan Castillo of the Sixteenth Division of the Court of Appeals. *Rollo*, pp. 3-23.

modification the decision of the trial court which found appellant Cesar Arenas guilty of the crime of murder.

Appellant was prosecuted in the Regional Trial Court of Caloocan City, Branch 129 under the following information:[2]

> That on or about the 1st day of June, 1997 in Kalookan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there, wil[l]fully, unlawfully and feloniously attack and shoot with a firearm on the head one NOLI PEÑAFIEL *Y* BIGCAS, thereby inflicting upon the latter serious physical injuries which injuries caused his instantaneous death.
>
> Contrary to law.[3]

During arraignment, appellant pleaded not guilty to the charge. After pre-trial, trial followed.

The prosecution established through eyewitness accounts that, at around 10:00 a.m. of June 1, 1997, Noli Peñafiel was standing along the sidewalk of Gen. Luis Street, Caloocan City. He was talking to his friend, a certain Dr. Dalida, while waiting for his niece. Appellant suddenly came from behind Peñafiel and fired two shots at the latter's head. The victim fell down and died shortly thereafter as a result of the fatal injuries inflicted on him.

Appellant's defenses were denial and alibi. He disavowed any participation in the killing of Peñafiel. He and his witnesses essentially tried to prove that he was in Dasmariñas, Cavite at the time of the incident. He allegedly spent the whole morning of June 1, 1997 helping his fellow *pahinante*[4] and their truck driver unload their delivery of Rebisco biscuits in the company's warehouse in Dasmariñas, Cavite.

After evaluating the evidence of the parties, the trial court ruled that appellant's denial was sufficiently refuted by the positive

---

[2] Court of Appeals Records, p. 2.

[3] *Id*.

[4] Truck helper.

testimony of the prosecution's witnesses. It also found that the positive identification of appellant as the killer destroyed his alibi:[5]

> WHEREFORE, premises considered, this Court finds the accused CESAR ARENAS guilty beyond reasonable doubt of the crime charged, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659. Accordingly, he shall serve the penalty of *Reclusion Perpetua* with all the necessary penalties under the law, and shall pay the costs.
>
> Pursuant to Section 7, Rule 117 of the Revised Rules on Criminal Procedure, the accused shall be credited with the period of his preventive detention.
>
> By way of civil liabilities, the accused shall pay the following amounts to the victim's heirs, without subsidiary imprisonment in case of insolvency.
>
> ₱50,000.00 – as death indemnity; and
> ₱20,000.00 – as reimbursement of funeral expenses.
>
> The Branch Clerk of this Court shall now issue the corresponding Commitment Order for the City Jail Warden of Caloocan City to transfer the accused to the Bureau of Corrections, Muntinlupa City.
>
> SO ORDERED.[6]

After appellant filed his notice of appeal, the trial court forwarded the records of the case to this Court. Pursuant to *People v. Mateo*,[7] however, the case was referred to the Court of Appeals for review.[8]

The Court of Appeals affirmed the decision of the trial court with modification.[9] It awarded the heirs of the victim ₱50,000 moral damages, ₱25,000 exemplary damages and ₱1,943,868

---

[5] Decision dated September 28, 2000, penned by Judge Bayani S. Rivera. Court of Appeals Records, pp. 16-25.

[6] *Id*.

[7] G.R. Nos. 147678-87, 07 July 2004, 433 SCRA 658.

[8] Resolution dated September 8, 2004 in G.R. No. 145232. *Rollo*, p. 2.

[9] *Supra* note 1.

for loss of earning capacity. The dispositive portion of the decision read:

> WHEREFORE, the instant appeal is ***DENIED***. The assailed *Decision* of the Regional Trial Court of Caloocan City, Branch 129 in Criminal Case No. C-52731, convicting accused-appellant of Murder, is hereby ***AFFIRMED*** with the ***MODIFICATION*** that accused-appellant is further ordered to pay the heirs of the victim ₱50,000.00 in moral damages, ₱25,000 as exemplary damages, and ₱1,943,868.00 for loss of earning capacity.
>
> SO ORDERED.[10]

Hence, this appeal.

Appellant essentially claims that the trial and appellate courts erred in giving credence to the prosecution's evidence, not his evidence.

The appeal lacks merit.

Both the trial and appellate courts ruled that appellant's denial and alibi were not worthy of belief. Instead, both courts gave credence to the testimony of the eyewitnesses of the prosecution. They categorically pointed to appellant as the one who shot the victim in the head. They testified that the shooting was carried out treacherously (that is, from behind the victim), thus affording him no opportunity to defend himself. For this reason, both the trial and appellate courts found that appellant's guilt for the crime of murder was sufficiently established beyond reasonable doubt. This Court finds no compelling reason to rule otherwise.

Pursuant to Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (RA) 7659, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* and to suffer all its accessory penalties. It must be stressed that pursuant to RA 9346, appellant is not eligible for parole.[11]

The heirs of Peñafiel were able to sufficiently prove their entitlement to the grant of ₱50,000 civil indemnity, ₱50,000 moral

---

[10] *Id*.

[11] See Section 3, RA 9346.

damages, ₱25,000 exemplary damages, ₱20,000 as reimbursement of funeral expenses and ₱1,943,868 for loss of earning capacity. Moreover, the said awards were in accordance with existing law and jurisprudence. There is therefore no reason to disturb them.

WHEREFORE, the appeal is hereby *DENIED*. The March 30, 2006 decision of the Court of Appeals in CA-G.R. CR No. 00671 finding appellant Cesar Arenas guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole and all its accessory penalties and to pay the heirs of Noli Peñafiel ₱50,000 civil indemnity, ₱50,000 moral damages, ₱25,000 exemplary damages, ₱20,000 as reimbursement of funeral expenses and ₱1,943,868 for loss of earning capacity, is *AFFIRMED*.

Costs against appellant.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173354. July 28, 2008]

HEIRS OF FORTUNATA MUYALDE, namely, ARTURO, TRINIDAD, FELICIDAD and DOROTEA, all surnamed MUYALDE, *petitioners, vs.* **BONIFACIO REYES, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROCEDURAL LAWS AND RULES, APPLICABILITY; APPEAL PERFECTED WITHIN THE REGLEMENTARY PERIOD

IN CASE AT BAR. — *Neypes v. Court of Appeals* was decided on September 14, 2005, during the pendency of the case at bar before the Court of Appeals. It is settled that procedural laws and rules are considered as applicable to actions pending and unresolved at the time of their passage. Petitioners having received copy of the trial court's order denying their motion for reconsideration on September 10, 2004, they had until September 25, 2004 to perfect their appeal. Since they paid the docket and other fees on September 20, 2004, they perfected their appeal within the reglementary period.

2. ID.; ID.; MANDATORY REQUIREMENT OF PAYMENT OF APPELLATE DOCKET FEES; QUALIFICATIONS; REASON. — Even assuming *arguendo* that the appellate docket fees were not paid within the reglementary period, this Court, in *La Salette College v. Pilotin*, held that the mandatory requirement of payment of appellate docket fees is qualified by the following: 1) failure to pay those fees within the reglementary period allows only discretionary, not automatic dismissal; and 2) such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances. For the policy of the courts is to encourage full adjudication of the merits of an appeal.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RELATIVITY OF CONTRACT; CASE AT BAR. — As for the RTC's finding that reformation of the "Compromise Agreement" would not lie as respondent's mother Crescencia had died, the same is erroneous. For contracts take effect between the parties and their assigns and heirs like respondent.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Agustin B. Alo for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The sisters Fortunata R. Muyalde (Fortunata), Cresencia R. Reyes (Cresencia) and Felicidad Revilla (Felicidad) inherited a commercial lot from their brother Aquilino Revilla. Felicidad died without any heir.

It appears that in an agreement entitled "Compromise Agreement" executed on June 10, 1996, Cresencia, mother of herein respondent Bonifacio Reyes, Jr., agreed to give to her sister Fortuna's six children Gertrudes Muyalde Marzan — herein petitioners Trinidad Muyalde Solis, Felicidad Muyalde, and Arturo Muyalde and their other siblings — one-third of a lot co-owned by Crescencia, Fortunata, and Felicidad, containing 2,233 square meters located in Urdaneta City which was registered under TCT No. 19209 in the name of Cresencia and her husband Bonifacio Reyes, Sr.

It further appears that on August 4, 2003, the herein petitioners-heirs of Fortuna filed a complaint for Partition before the Regional Trial Court of Urdaneta, docketed as Civil Case No. U-7846 against herein respondent Bonifacio Reyes, Jr. The complaint was dismissed for lack of cause of action.

Subsequently or on October 30, 2003, petitioners filed a complaint also against respondent, for "Ownership, Reformation of instrument, Partition and Delivery of Share," docketed as Civil Case No. U-7952 before the Urdaneta RTC. To the complaint, respondent filed a motion to dismiss on the grounds of *res judicata* and failure to state a cause of action.

By Order[1] of May 14, 2004, Branch 48 of the Urdaneta City RTC brushed aside respondent's allegation of *res judicata* as Civil Case No. U-7846 was not decided on the merits. The trial court dismissed the complaint, however, on three grounds: 1) "petitioners' actions . . . had not been sufficiently laid"; 2) "partition may be premature unless . . . the parties had already

[1] Records, pp. 71-72.

agreed [on] the extent of their participation in the land," and 3) petitioners' lack of personality to sue.

Thus the RTC held:

> The allegations of the complaint clearly show that plaintiff's bone of contention is their alleged mistake in the Compromise Agreement as their true intention was not expressed therein. Plaintiffs, in fact, insist on the reformation of the said agreement in order to reflect their correct share in the subject realty. Obviously, they are not questioning defendant's ownership nor have they raised any ground to resist defendant's claim of ownership. Hence, plaintiff's actions for ownership, partition and delivery of share had not been sufficiently laid. Moreover, at this point, partition may be premature unless, and until, the parties had already agreed to the extent of their participation in the land in question (sic).
>
> Finally, as to plaintiff's action for reformation, it is inconceivable how at this point reformation could be achieved considering that Cresencia Reyes, one of the parties to the [Compromise A]greement, died already and the defendant, **Cresencia's heir, was never a party to the said agreement while two of [Fortunata's] heirs were not, likewise, made parties thereto.** Verily, the said heirs lacked personality to sue herein defendant, both not being parties to the case. Thus, lack of personality to sue can be used as a ground for a motion to dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action. x x x Moreover, we can never discover the true intention of Cresencia Reyes.[2] (Emphasis and underscoring supplied)

Petitioners later filed on June 3, 2004 a Motion to Admit Amended Complaint.[3] The following day or on June 4, 2004, petitioners having received a copy of the RTC's May 14, 2004 Order, filed a Motion for Reconsideration of the trial court's May 14, 2004 Order.[4] The RTC denied the Motion for Reconsideration by Order[5] of August 30, 2004.

---

[2] *Id*. at 71-72.

[3] *Id*. at 75-81.

[4] *Id*. at 91-96.

[5] *Id*. at 122-123.

Petitioners thereupon filed a Notice of Appeal[6] before the RTC. Respondent also filed before the RTC a Motion to Dismiss Appeal,[7] followed by two supplemental motions,[8] citing, among other things, petitioners' failure to pay the appellate docket fees within the reglementary period.

In their Comment-Opposition to the Motion to Dismiss Appeal filed with the RTC,[9] petitioners pleaded for a liberal application of the rules, alleging that:

x x x x x x x x x

On the non-payment of docket and other fees within the period of taking an appeal, it is true that plaintiffs paid the more than ₱4,000 fees about 10 days late. The reason for this is because when plaintiff Arturo Muyalde went to pay the same he had only ₱1,000 cash on hand as he was not aware of the increased fees which took effect on 16 **August 2004** but which could be implemented only by the clerk of court in Urdaneta City in the last week of August 2004. He tried though to raise the money and ultimately was able to pay the full amount of the docket and other fees.[10] (Emphasis and underscoring supplied)

By Order[11] of January 20, 2005, the RTC gave due course to petitioners' appeal and ordered the elevation of the records of the case to the Court of Appeals. Passing on the belated payment by petitioners of the appellate docket and other fees, the RTC held that petitioners' momentary lack of funds, in addition to the confusion with the new rules and the fact that the fees were eventually paid in full, justified a relaxation of the Rules.[12]

---

[6] *Id*. at 135.

[7] *Id*. at 126-129.

[8] *Id*. at 143-144, 149-150.

[9] *Id*. at 152-155.

[10] *Id*. at 152.

[11] *Id*. at 166-167.

[12] *Id*. at 166.

Respondent filed a Motion for Reconsideration[13] of the said order which was denied.[14]

Respondent thus filed a Petition for *Certiorari*[15] before the Court of Appeals assailing the January 20, 2005 Order of the RTC denying his Motion to Dismiss Appeal and the supplemental motions thereto. The petition was docketed as CA-G.R. SP No. 90251.

Respondent later filed before the Court of Appeals a Motion to Dismiss the Appeal, which was docketed as CA G.R. No. CV-85043,[16] proffering the same grounds on which he anchored his petition for *certiorari* — CA G.R. SP NO. 90251 that the appeal was perfected out of time due to the late payment of the appellate docket fees.

By Resolution[17] of October 20, 2005, the 14th Division of the Court of Appeals, acting on respondent's Motion to Dismiss Appeal in CA G.R. CV No. 85043, strictly applied the rule on the payment of appellate docket fees and dismissed petitioners' appeal. Petitioners' Motion for Reconsideration[18] was denied by Resolution of June 28, 2006.[19]

Subsequently, by Decision[20] of June 9, 2006, the Special Third Division of the Court of Appeals dismissed respondent's

---

[13] *Id.* at 170-173.

[14] *Id.* at 185.

[15] *Rollo,* pp. 36-45.

[16] CA *rollo,* pp. 9-11.

[17] Penned by Court of Appeals Associate Justice Hakim S. Abdulwahid, with the concurrences of Associate Justices Remedios A. Salazar Fernando and Estela M. Perlas Bernabe, *id.* at 19-20.

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

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

[20] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrences of Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino, *rollo*, pp. 46-52.

petition for *certiorari* in CA-G.R. No. 90251. Citing this Court's ruling in *Neypes v. Court of Appeals*,[21] the appellate court held:

> x x x [T]he [petitioners] had a "fresh period" of fifteen (15) days from the receipt of the denial of their motion for reconsideration, or up to September **25**, 2004, within which to perfect their appeal. With their payment of docket and other lawful fees on September **20**, 2004, the [petitioners] therefore perfected their appeal within the reglementary period.[22] (Emphasis in the original; underscoring supplied)

Hence, the present Petition for Review[23] questioning the dismissal by the 14th Division of the Court of Appeals of their appeal as contrary to prevailing rules and jurisprudence, citing *Neypes v. Court of Appeals.*[24]

The petition is impressed with merit.

In *Neypes v. Court of Appeals*,[25] this Court, in the exercise of its "sole prerogative to amend, repeal, or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases,"[26] established the following rules:

> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, **counted from receipt of the order dismissing** a motion for a new trial or **motion for reconsideration**.
>
> Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional

---

[21] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[22] *Rollo*, pp. 51-52. *Vide* receipts of payment in full of appellate docket fees and other fees, records, pp. 138-140A.

[23] *Id.* at 7-20.

[24] *Supra* note 21. *Vide rollo*, pp. 12-17.

[25] *Supra* note 21.

[26] *Id.* at 643-644.

Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

x x x x x x x x x

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of *only* if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.[27] (Emphasis and underscoring supplied)

Neypes v. Court of Appeals was decided on September 14, 2005, during the pendency of the case at bar before the Court of Appeals. It is settled that procedural laws and rules are considered as applicable to actions pending and unresolved at the time of their passage.[28] Petitioners having received copy of the trial court's order denying their motion for reconsideration on September 10, 2004,[29] they had until September 25, 2004 to perfect their appeal. Since they paid the docket and other fees on September 20, 2004, they perfected their appeal within the reglementary period.

Even assuming *arguendo* that the appellate docket fees were not paid within the reglementary period, this Court, in *La Salette College v. Pilotin*,[30] held that the mandatory requirement of payment of appellate docket fees is qualified by the following: 1) failure to pay those fees within the reglementary period allows

---

[27] *Id.* at 644-646.

[28] Vide *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426, 438.

[29] Records, p. 135.

[30] 463 Phil. 785 (2003).

only discretionary, not automatic dismissal; and 2) such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.[31] For the policy of the courts is to encourage full adjudication of the merits of an appeal.[32]

Given the circumstances which the RTC noted in giving due course to petitioners' appeal, some of which were echoed by the Special Third Division of the Court of Appeals in its Decision of June 9, 2006 dismissing respondent's petition for *certiorari*, the present case calls for a liberal application of the rule requiring the payment of appellate docket fee.

On to the merits of petitioners' appeal.

In dismissing petitioners' complaint, the RTC held that, *inter alia*, petitioners' allegations do not make out a clear case of ownership, partition, and/or delivery of share. The complaint of petitioners alleged, however, that they are heirs of Fortunata who, together with her siblings Felicidad and respondent's mother Cresencia, co-owned the land in question.[33] That explains why petitioners do not question respondent's ownership, what they question being his and their respective shares in the co-owned lot.[34]

As for the RTC's finding that reformation of the "Compromise Agreement" would not lie as respondent's mother Crescencia had died, the same is erroneous. For contracts take effect between the parties and their assigns and heirs like respondent.[35]

On the RTC's observation that some of petitioners' siblings-co-heirs were not parties to the "Compromise Agreement," the following provisions of said agreement show otherwise:

---

[31] *Id.* at 794 (citation omitted).

[32] *Lanaria v. Planta*, G.R. No. 172891, November 22, 2007, 538 SCRA 79, 97.

[33] Records, p. 2.

[34] *Id.* at 3.

[35] CIVIL CODE, Article 1311.

CRESENCIA R. REYES, of legal age, Filipino, widow and a resident of 26 Ambrosio St., Urdaneta, Pangasinan, to be known herein after as the FIRST PARTY,

-and-

GERTRUDES M. MARZAN, **TRINIDAD** M. SOLIS,[36] both widow[ed], and **ARTURO** R. MUYALDE, married to Wilma Soy, all of legal age, Filipinos and residents of Bayabas St., Urdaneta, Pangasinan, to be known hereinafter as the SECOND PARTY,

W I T N E S S E T H :

I. That, the FIRST PARTY is the legitimate sister of FORTUNATA REVILLA who died in July, 1993 in Urdaneta, Pangasinan, leaving as her **sole children and heirs** the SECOND PARTY together with **FELICIDAD** MUYALDE, married to Dominador Agustin and resides at #246 Baser St., Mangahan, Quezon City; **VERONICA** MUYALDE and **DOROTEA** MUYALDE who are both single and presently reside at #31151 Birkdale Way, Hayward, California, USA 94544 and #522 Ashleigh Road, Fairfax VA 22030 USA, respectively;

II. That the late AQUILINO REVILLA died without any issue at the time of his death was the legitimate owner of that parcel of residential [land] situated in Urdaneta, Pangasinan and identified as Lot 378, registered in his name under Transfer Certificate of Title No. 17300P, and subsequently, thereafter with the execution of an affidavit of self-adjudication the same was cancelled and Transfer Certificate of Title No. 19209, *i.e*. in the name of Bonifacio Reyes, now deceased, and Cresencia Revilla, who is the one referred to above as the FIRST PARTY, subject to Se[c]. 4, Rule 74 of the New Rules of Court;

III. That, actually the legitimate heirs of Aquilino Revilla are his two sisters, namely, Fortunata Revilla and the [FIRST] PARTY;

IV. To avoid court litigation and in order that the FIRST PARTY could proceed and later on consummate the sale transaction, she

---

[36] Petitioners explained why they used Muyalde as their common family name: "All the petitioners are siblings they being the children of the late Fortunata Revilla-Muyalde, from whom said petitioners are claiming rights over the property subject of the case. The use [of] MUYALDE as the common family name of the petitioners is purposely to easily identify and trace their filiation to their predecessor-in-interest of the property." *Rollo,* p. 76.

agreed to **give to the SECOND PARTY including their sisters residing abroad** the sum of THREE MILLION PESOS (₱3,000,000.00), Phil. Currency, representing the value of the one-third (1/3) portion of said parcel of land with an area of Two Thousand (sic) Hundred Thirty-Three (2,233) sq. meters, more or less, as their share thereof, and the delivery of said sum shall be immediately after the payment of the sale consideration in Urdaneta, Pangasinan x x x

x x x[37] (Emphasis and underscoring supplied)

In fine, it was error for the RTC to dismiss petitioners' complaint.

WHEREFORE, the petition is *GRANTED*. The Resolutions of the Court of Appeals dated October 20, 2005 and June 28, 2006 are *REVERSED* and *SET ASIDE*.

The court of origin, Branch 48 of the Regional Trial Court of Urdaneta, Pangasinan, is *ORDERED* to reinstate Civil Case No. U-7952 to its docket and take action thereon with dispatch. Let the records of the case be *REMANDED* to it.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173430. July 28, 2008]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **FELOMINO S. CASCO,** *respondent.*

---

[37] Records, p. 21.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DISABILITY BENEFITS; CONVERSION OF PERMANENT PARTIAL DISABILITY BENEFIT TO PERMANENT TOTAL DISABILITY BENEFIT IS NOT PROHIBITED IF THE EMPLOYEE'S AILMENT QUALIFIES AS SUCH. — [T]here is nothing in the law which prohibits the conversion of PPD benefit to PTD benefit if it is shown that the employee's ailment qualifies as such. The grant of PTD benefit to an employee who was initially compensated for PPD but is found to be suffering from PTD would not be prejudicial to the government to give it reason to deny the claim. The Court has in fact allowed in the past the conversion of PPD benefit to PTD benefit. These rulings are consistent with the primary purpose of P.D. No. 626, that is, to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in loss of income, as well as the Constitutional mandate to afford full protection to labor. x x x A person's disability might not emerge at one precise moment in time but rather over a period of time. It is possible that an injury which at first was considered to be temporary may later on become permanent, or one who suffers a partial disability becomes totally and permanently disabled by reason of the same cause. Thus, while respondent had been awarded 38 months of PPD benefits commensurate to his physical condition at the time of his retirement, this does not preclude the conversion of the benefits to which he is entitled as a result of the fact that he later on became permanently and totally disabled.

2. ID.; ID.; THREE TYPES OF DISABILITY BENEFITS, DEFINED. — There are three types of disability benefits granted under P.D. No. 626: (1) temporary total disability; (2) permanent total disability; and (3) permanent partial disability. A disability is considered total and permanent if as a result of the injury or sickness, the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days. A disability is partial and permanent if, as a result of the injury or sickness, the employee suffers a permanent partial loss of the use of any part of his body.

3. ID.; ID.; DISABILITY SHOULD BE UNDERSTOOD NOT ONLY SINGLY THROUGH ITS MEDICAL SIGNIFICANCE BUT,

MORE IMPORTANTLY, IN TERMS OF A PERSON'S LOSS OF EARNING CAPACITY; PERMANENT TOTAL DISABILITY; EXPLAINED. — [D]isability should be understood not singly through its medical significance but, more importantly, in terms of a person's loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness but rather an incapacity to perform gainful work which is expected to be permanent. Total disability does not require that the employee be absolutely disabled, or totally paralyzed. What is necessary is that the injury must be such that he cannot pursue his usual work and earn therefrom.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

TINGA, *J.*:

The Government Service Insurance System (GSIS) assails the Decision[1] of the Court of Appeals dated 29 April 2005, which reversed the Decision[2] of the Employees' Compensation Commission (ECC) denying Felomino Casco's request for conversion of his permanent partial disability (PPD) benefits to permanent total disability (PTD) benefits under Presidential Decree No. 626 (P.D. No. 626), as amended.

The following facts, culled from the assailed decision, are undisputed:

---

[1] *Rollo*, pp. 39-44; Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe.

[2] *Id*. at 47-50.

Felomino Casco, petitioner herein, was employed as a teacher of the Department of Education, Culture and Sports (DECS). He joined the government service on August 14, 1978 on a provisional status and was assigned at the Quezon City Division. On July 1, 1989, he was promoted to Teacher I. On January 1, 1994, he was assigned at DECS-Mandaluyong. In 1998- up to 1999, he was assigned at the Mandaluyong East High School wherein he taught Filipino.

As a Filipino teacher, Casco was required to regularly perform the following tasks:

1. Teach Filipino III as a subject in the secondary school curriculum.
2. Attend professional meetings conducted in the school and some seminars in the division level.
3. Develop desirable values among his students.
4. Submit the required reports/records to the department chairman/office as the case may be.
5. Prepare lesson plans.
6. Participate in school and community programs and render allied services.

Sometime in 1994, Casco was diagnosed to be hypertensive. On December 7, 1995, he was admitted at the Philippine General Hospital where he was diagnosed of CVA, Right Middle Cerebral Artery, Thrombotic. On October 14, 1999, he suffered another attack and was confined at the Our Lady of Lourdes Hospital. This forced him to retire from the government service at an early age.

Casco then applied for disability benefits under *Presidential Decree No. 626,* as amended. On October 14, 1999, the Government Service Insurance System (GSIS) granted him thirty-eight (38) months of permanent partial disability (PPDI).

On December 10, 2000 up to December 19, 2000, Casco was again confined at the Potenciano Hospital due to his ailments. His confinement within the specified period was likewise paid by the System.

Casco's latest physical examination reveals that he still experiences chest pain, which is pricking, in character, limping accompanied by lapse of memory and vertigo. Thus, he requested the System to convert his permanent partial disability to permanent total disability (PTD) pursuant to *P.D. 626,* as amended, but the same was denied.

Dissatisfied, Casco appealed before the Employees' Compensation Commission.

On March 26, 2003, the ECC rendered a decision affirming the decision of the System. The pertinent portion of the said decision is hereby quoted as follows:

x x x x x x x x x

> However, as regard his request for conversion of his PPD benefits into PTD benefits, we are not inclined to give merit to his claim. The result of his latest physical examination does not warrant grant of PTD benefits as required under the law. His examination failed to show that he suffers from motor or sensory deficit. Neither was it shown that he experienced permanent complete paralysis of two limbs nor incurable imbecility and insanity as a result of his ailments.

Premises considered, the prayer for compensation benefits under PD 626, as amended, is hereby DENIED.

SO ORDERED.

Respondent appealed the ECC decision to the Court of Appeals, which resolved the case in his favor. The appellate court ordered the GSIS to grant respondent full disability benefits as provided under P.D. No. 626, as amended.

In a Resolution[3] dated 4 July 2006, the Court of Appeals denied GSIS's motion for reconsideration.

In the Petition for Review on *Certiorari*[4] dated 9 August 2006, GSIS defends its position that respondent failed to adduce proof that his ailment is categorized as a PTD under the law or that it is attributable to his former occupation. According to GSIS, respondent's physical condition at the time of his retirement was not of such nature as to satisfy the criteria for a PTD.

Respondent, in his Comment[5] dated 30 November 2006, insists that he is entitled to PTD benefits because his illness, which

---

[3] *Id*. at 45.

[4] *Id*. at 14-38.

[5] *Id*. at 62-70.

developed during his employment, persisted even after his retirement and rendered him incapable of continuing his employment.

GSIS's Reply[6] dated 19 April 2007 merely reiterates its arguments.

The only issue to be resolved is whether respondent's claim for conversion of his PPD benefits to PTD benefits should be granted.

We shall preface our ruling by repeating the Court's pronouncement in *Austria v. Court of Appeals*[7] that there is nothing in the law which prohibits the conversion of PPD benefit to PTD benefit if it is shown that the employee's ailment qualifies as such. The grant of PTD benefit to an employee who was initially compensated for PPD but is found to be suffering from PTD would not be prejudicial to the government to give it reason to deny the claim. The Court has in fact allowed in the past the conversion of PPD benefit to PTD benefit. These rulings are consistent with the primary purpose of P.D. No. 626, that is, to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in loss of income, as well as the Constitutional mandate to afford full protection to labor.[8]

There are three types of disability benefits granted under P.D. No. 626: (1) temporary total disability; (2) permanent total disability; and (3) permanent partial disability. A disability is considered total and permanent if as a result of the injury or sickness, the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days. A disability is partial and permanent if, as a result of the injury or sickness, the employee suffers a permanent partial loss of the use of any part of his body.[9]

---

[6] *Id*. at 80-95.

[7] 435 Phil. 926 (2002).

[8] *Id*. at 932-933.

[9] *Id*. at 931.

In *GSIS v. Court of Appeals*[10] and *Gonzaga v. ECC, et al.*,[11] the Court declared that disability should be understood not singly through its medical significance but, more importantly, in terms of a person's loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.[12] It does not mean absolute helplessness but rather an incapacity to perform gainful work which is expected to be permanent. Total disability does not require that the employee be absolutely disabled, or totally paralyzed. What is necessary is that the injury must be such that he cannot pursue his usual work and earn therefrom.

In this case, respondent was diagnosed to be hypertensive as a result of the physical and mental stress of his work. His hypertension resulted in two cerebrovascular accidents, the clinical term for stroke, first in 1995 and again in 1999.[13] As certified by his attending physician, Dr. Fernando F. Piedad, the degree of his disability is permanent and total.[14] While it may be true that respondent's physical condition at the time of his retirement was not considered as a PTD, his condition subsequently worsened such that in December 2000, he was again confined in a hospital. Respondent also limps and continues to experience chest pain, vertigo and lapses in memory.

A person's disability might not emerge at one precise moment in time but rather over a period of time. It is possible that an injury which at first was considered to be temporary may later on become permanent, or one who suffers a partial disability becomes totally and permanently disabled by reason of the same cause.[15]

---

[10] 328 Phil. 1240 (1996).

[11] 212 Phil. 405 (1984).

[12] 328 Phil. 1240, 1246 (1996).

[13] CA *rollo*, p. 30; Decision of the ECC dated March 26, 2003.

[14] *Id*. at 36.

[15] *GSIS v. Court of Appeals*, *supra* note 8. See also *GSIS v. Court of Appeals*, 349 Phil. 357, 363 (1998).

Thus, while respondent had been awarded 38 months of PPD benefits commensurate to his physical condition at the time of his retirement, this does not preclude the conversion of the benefits to which he is entitled as a result of the fact that he later on became permanently and totally disabled. When an employee is constrained to retire at an early age due to his illness and the illness persists even after retirement, resulting in his continued unemployment, as in this case, such a condition amounts to total disability which should entitle him to the maximum benefits allowed by law.[16]

Indeed, denying respondent, who had rendered more than 21 years of service[17] but was forced to retire due to his ailment, the PTD benefits to which he is indisputably entitled would be contrary to the spirit of P.D. No. 626 and the social justice principle enshrined in our Constitution.

WHEREFORE, the instant petition is hereby *DENIED* for lack of merit. The assailed Decision of the Court of Appeals dated 29 April 2005, and its Resolution dated 4 July 2006, are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

---

[16] *GSIS v. CA,* 328 Phil. 1240, 1247-1248 (1996).

[17] CA *rollo,* p. 20; From 14 August 1978 to 14 October 1999.

THIRD DIVISION

[G.R. No. 174016. July 28, 2008]

SEVERINO C. BALTAZAR, represented by his Attorney-in-Fact ARLENE C. BALTAZAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and ARMANDO C. BAUTISTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, ELUCIDATED. — Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. The determination of probable cause is a function that belongs to the public prosecutor — one that, as far as crimes cognizable by the RTC are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. This broad prosecutorial power is, however, not unfettered, because just as public prosecutors are obliged to bring forth before the law those who have transgressed it, they are also constrained to be circumspect in filing criminal charges against the innocent. Thus, for crimes cognizable by the regional trial courts, preliminary investigations are usually conducted. As defined under the law, a preliminary investigation is an inquiry or a proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject

to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.

2. ID.; ID.; ID.; DISTINGUISHED FROM PRELIMINARY INQUIRY. — In *People v. Inting*, this Court aptly stated: Judges and Prosecutors alike should distinguish the **preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released**. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the prosecutor. Under Section 1, Rule 112 of the Revised Rules of Court, the investigating prosecutor, in conducting a preliminary investigation of a case cognizable by the RTC, is tasked to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent therein is probably guilty thereof and should be held for trial. A preliminary investigation is for the purpose of securing the innocent against hasty, malicious and oppressive prosecution; and to protect him from an open and public accusation of a crime, as well as for the trouble, expense and anxiety of a public trial. If the investigating prosecutor finds probable cause for the filing of the Information against the respondent, he executes a certification at the bottom of the Information that, from the evidence presented, there is a reasonable ground to believe that the offense charged has been committed and that the accused is probably guilty thereof. Such certification of the investigating prosecutor is, by itself, ineffective. It is not binding on the trial court. Nor may the RTC rely on the said certification as basis for a finding of the existence of probable cause for the arrest of the accused. The preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him in making the determination of

probable cause for issuance of the warrant of arrest. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge in making **his** determination.

3. ID.; ID.; ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT ANY DISPOSITION OF THE CASE AS ITS DISMISSAL OR THE CONVICTION OR ACQUITTAL OF THE ACCUSED RESTS IN THE SOUND DISCRETION OF THE COURT. — In *Crespo v. Mogul*, we held: The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. We have likewise held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERROR OF JURISDICTION, DEFINED; CASE AT BAR. — Petitioner's arguments before the Court of Appeals can be reduced to the allegation that respondent Judge gravely erred in appreciating the evidence presented; thus, he seriously abused his discretion, an act amounting to lack or excess of jurisdiction — an error of jurisdiction, so termed. An error of jurisdiction is one in which the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or excess of jurisdiction, and which is correctible by the extraordinary writ of *certiorari.* There being no grave abuse of discretion on the part of Judge Concepcion amounting to lack or excess of jurisdiction, we hold that the Court of Appeals committed no reversible error in dismissing the petition.

APPEARANCES OF COUNSEL

Punzalan & Punongbayan Law Office for petitioner.
The Solicitor General for public respondent.
Mark C. Arcilla for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45[1] of the Revised Rules of Court assailing the (1) Decision[2] dated 26 April 2006 of the Court of Appeals in CA-G.R. SP No. 88237 denying the Petition for *Certiorari* under Rule 65 filed by herein petitioner Severino C. Baltazar;[3] and

---

[1] Appeal by *Certiorari* to the Supreme Court.

[2] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Eliezer R. de los Santos and Arturo G. Tayag, concurring; *rollo,* pp. 67-80.

[3] Petitioner Severino C. Baltazar is one of the children of the deceased, Erlinda Baltazar. (CA *rollo,* p. 3.) He is represented in this petition by Arlene C. Baltazar by virtue of a Special Power of Attorney executed for the purpose. (*Rollo,* p. 38.)

the (2) Resolution dated 1 August 2006 of the appellate court in the same case denying petitioner's Motion for Reconsideration.

In its decision, the Court of Appeals affirmed the Order of Judge Crisanto C. Concepcion of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 12, dated 30 July 2004,[4] granting the Motion to Withdraw Information for Murder in Criminal Case No. 3042-M-2002 against private respondent Armando Bautista.

The antecedent facts of the present case are as follows:

At about 8:30 p.m. of 21 April 2002, in the province of Bulacan, a silver/gray colored car with Plate No. TNM-606, traveling from the direction of Calumpit and going towards the direction of Pulilan Public Market, suddenly hit a *pedicab*.[5] Because of the impact, the passengers of the *pedicab* — Erlinda Baltazar and her son, Rolando Baltazar — were thrown out of the *pedicab*. Witnesses Cristobal Atienza and Louie Reyes claimed in their respective sworn statements that after hitting the *pedicab*, they saw the car stop, maneuver into reverse, and run over the hapless victims, before fleeing the crime scene. As a result, Erlinda Baltazar died while Rolando Baltazar suffered injuries and was brought to Good Shepherd Hospital in Pulilan, Bulacan.

In the course of the investigation of the incident, Police Officer 1 (PO1) Simplicio Santos of the Philippine National Police (PNP) of Pulilan, Bulacan, traced the ownership of the car which bumped the *pedicab* and discovered that the registered owner thereof was a certain Celso Bautista, who had already sold the said vehicle to private respondent Armando Bautista. PO1 Santos then went to private respondent's residence where he recovered the car stained with blood.

Consequently, petitioner Severino C. Baltazar, one of the children of the deceased Erlinda Baltazar and brother of the injured Rolando Baltazar, filed with the Municipal Trial Court (MTC) of Pulilan, Bulacan two separate criminal complaints

---

[4] *Rollo*, p. 53.

[5] A means of transportation consisting of a bicycle with a sidecar.

against private respondent, one for the Murder[6] of Erlinda Baltazar and the other for Frustrated Murder for the injuries suffered by Rolando Baltazar.[7] It is petitioner's complaint for the Murder of his mother, Erlinda Baltazar, which is the focus of the present controversy.

Hon. Horacio Viola, Jr., Presiding Judge of the MTC of Pulilan, Bulacan, conducted the requisite preliminary investigation, and upon its termination, issued his Resolution dated 23 July 2002[8] recommending, *inter alia*, the dismissal of the Murder charge against private respondent in view of the admission of his nephew, Joel Santos, in a sworn statement,[9] that he was the one driving the car when the deadly incident occurred.

The dispositive portion of the MTC Resolution reads:

> Premises considered, it is respectfully recommended that the above cases for Murder and Frustrated Murder be dismissed and instead an Information for Reckless Imprudence Resulting to Homicide and Frustrated Homicide be filed against Joel Santos as he admitted to be the driver of the vehicle involved in the above case.[10]

The records of the cases were eventually transmitted to the Provincial Prosecutor of Bulacan for appropriate action.

Upon receipt of the case records by the Provincial Prosecutor of Bulacan, petitioner prayed for and was granted by the said Office a reinvestigation. By a Resolution dated 23 September 2002,[11] the Provincial Prosecutor of Bulacan[12] reversed the findings of

---

[6] Docketed as Criminal Case No. 02-8307. (CA *rollo,* p. 51.)

[7] Docketed as Criminal Case No. 02-8308. (CA *rollo,* p. 57.)

[8] *Rollo,* pp. 51-54.

[9] Records, p. 55. Notwithstanding the existence of the Sworn Statement executed by Joel Santos, the records do not reflect the action taken by the Fiscal pursuant to the said Sworn Statement.

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

[11] Records, pp. 12-14.

[12] 1st Assistant Provincial Prosecutor Alfredo Geronimo.

Judge Viola, Jr. and found probable cause to merit the indictment of private respondent for the murder of Erlinda Baltazar.[13]

The Information dated 21 October 2002 filed against private respondent states that:

> The undersigned 1st Asst. Provincial Prosecutor accuses Armando C. Bautista @ Arman of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, committed as follows:
>
> That on or about the 21st day of April, 2002, in the municipality of Pulilan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill one Erlinda Cruz-Baltazar, with evident premeditation, treachery and with the use of a Mitsubishi Sedan car with plate No. TNM-606, did then and there wilfully, unlawfully and feloniously run over the said Erlinda Cruz-Baltazar, thereby inflicting on her mortal injuries which directly caused her death.[14]

It was docketed as Criminal Case No. 3042-M-2002 and raffled to the sala of Hon. Judge Crisanto Concepcion, Presiding Judge of Branch 12 of the RTC of Malolos, Bulacan.[15]

Acting on the said criminal case, Judge Concepcion issued an Order dated 14 November 2002 for the issuance of a warrant for the arrest of private respondent:

> The existence of probable cause having been fully determined from a personal evaluation of the facts as alleged in the information and its supporting documents filed by the Office of the Provincial Prosecutor of Bulacan, justifying the arrest of accused, let the corresponding warrant be issued for that purpose, the same to be

---

[13] *Rollo,* p. 69. In this 23 September 2002 Resolution, the Provincial Prosecutor of Malolos, Bulacan, held that, as to the injury sustained by Rolando Baltazar for which Armando Bautista was charged with frustrated murder under Criminal Case No. 028308, the Provincial Prosecutor decreed that Armando Bautista should be charged under the last paragraph, Article 365 (Imprudence and Negligence) of the Revised Penal Code. (Records, p. 14.)

[14] *Rollo,* p. 40; records, p. 1.

[15] *Id*. at 70.

indorsed to the Chief Inspector, PNP, Plaridel, Bulacan, the Bulacan PNP Provincial Command, the Chief, PNP/CIDG, Malolos, Bulacan, and the Director, NBI, Pulilan, Bulacan, for service and implementation.[16]

On 28 February 2003, private respondent filed a Motion for Reinvestigation before the RTC, Branch 12.[17] The same was denied in the order of the RTC dated 7 March 2003.[18]

On 23 May 2003, private respondent filed with the Department of Justice (DOJ) a Petition for Review of the Resolution dated 23 September 2002 of the Provincial Prosecutor of Bulacan finding probable cause that he committed the murder of Erlinda Baltazar.[19]

About a year later, on 27 May 2004, on the strength of the warrant of arrest issued by the RTC, private respondent was apprehended and detained pending trial.[20]

Private respondent was set to be arraigned on 15 June 2004. However, Judge Concepcion postponed the arraignment upon motion of private respondent who invoked the pendency of his Petition for Review with the DOJ.[21] On 9 July 2004, private respondent's rescheduled arraignment again did not push through because he presented before the RTC a copy of the Resolution dated 8 July 2004, issued by Acting DOJ Secretary Ma. Merceditas N. Gutierrez, reversing the findings of the Provincial Prosecutor of Bulacan. The dispositive portion of the said DOJ Resolution reads:[22]

All told, We are of the view and so hold that respondent could not be held criminally liable for murder or less serious physical

---

[16] *Id.* at 42.

[17] Records, p. 29.

[18] *Id.* at 35.

[19] *Id.* at 45.

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

[21] *Id.* at 5.

[22] *Rollo*, pp. 70-71.

injury as there was no malice or intent to cause injury (dolo) to the victims. Neither can he be held liable for reckless imprudence resulting to homicide or less serious physical injury as there was no sufficient proof of negligence (culpa). This is a case of accident, an exempting circumstance under paragraph 4 Article 12 of the Revised Penal Code. Thus, **Where the death of the deceased was due to an accident without any negligence on the part of the driver of the automobile, there being no sufficient proof on record to establish the latter's negligence, there is no criminal liability (*United States vs. Tayongtong*, 21 Phil. 476).**

WHEREFORE, the Resolution dated September 23, 2002 of the Provincial Prosecutor of Bulacan is hereby REVERSED and SET ASIDE. He is hereby directed to immediately cause the withdrawal of the information for murder and less serious physical injury filed against respondent Armando C. Bautista before the Regional Trial Court, Branch 12 of Malolos, Bulacan and to report the action taken thereon within ten (10) days from receipt hereof.[23]

Pursuant to the afore-quoted DOJ Resolution, a Motion to Withdraw Information[24] dated 28 July 2004 was filed by the Assistant Provincial Prosecutor with the RTC and was granted by Judge Concepcion in an Order issued on 30 July 2004[25] based on the following ratiocination:

Acting on the Motion to Withdraw Information filed by 3rd Asst. Provincial Prosecutor Benjamin R. Caraig, the regular public prosecutor assigned to this Court, for the reason stated therein, there being no cogent reason to rule otherwise, considering further that the accused is a detention prisoner in this case, the same is hereby granted.

WHEREFORE, as prayed for by the prosecution, the information for murder filed against herein accused is hereby considered withdrawn from the docket of this Court.

Unless herein accused Armando c. Bautista @ Arman should be further detained for any valid cause or reason, the Provincial Jail

---

[23] *Id*. at 50-51.

[24] *Id*. at 52.

[25] *Id*. at 53.

Warden of Bulacan is hereby directed to effect the immediate release from his detention in this case.

Let copies of this order be furnished the prosecution, the accused, his counsel, and the Provincial Jail Warden of Bulacan.[26]

A Motion for Reconsideration[27] of the 30 July 2004 Order was filed by the private prosecutor, but Judge Concepcion denied the same in another Order dated 23 November 2004.[28] The RTC Order reads:

[A]fter reading the statements of the witnesses given to the police soon after the tragic accident occurred in the evening of April 21, 2002, nothing was mentioned by the witnesses of the alleged intentional killing of the victim by running over her with the car of the accused. What they said to the police was what appeared to be a simple case of criminal negligence in driving the car by the accused when said vehicle bumped the pedicab occupied by the victims who were thrown out, resulting to the death of one of them, without the accused rendering any help or assistance to them, but fleeing from the scene of the accident — a case of hit and run accident. Then later on one of these witnesses executed an affidavit stating that the car, after bumping the pedicab of the victims, stopped and then moved backwards intentionally to run over one of the victims who was killed as a result thereof. Such declaration is suspect of a mere afterthought to create a much graver offense than a case of criminal negligence, the Court not hesitating to say that from the statement of the police investigator in his affidavit, he clearly appears not an impartial police investigator but one who has expressed his bad opinions of the accused instead of giving an impartial report on his findings as a police investigator. And the Court could not help but suspect that the police investigation was so made to create a capital offense against the accused, maybe because the brother of the victim who died in the accident was a police officer himself by the name of SPO3 Cruz. Another important factor in this case is the admission of one Joel Santos in his own affidavit to be the driver of the car when the accident happened. Such admission under oath by Joel Santos should not

---

[26] *Id*. at 53.

[27] *Id*. at 54.

[28] *Id*. at 64.

have been ignored at all in finally resolving the case before filing it in Court. This probably is the reason why the Department of Justice directed the Office of the Provincial Prosecutor of Bulacan to immediately cause the withdrawal of the information for murder and less serious physical injury filed against accused Armando C. Bautista.[29]

Petitioner thus filed a Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 88237, seeking the nullification and setting aside of Judge Concepcion's Order dated 30 July 2004 for having been rendered in grave abuse of discretion amounting to lack or excess of jurisdiction. In a Decision dated 26 April 2006, the appellate court found that:

> In granting the motion to dismiss, respondent Judge did not rely solely on the resolution of the acting Secretary of Justice. The Order dated November 23, 2004 of respondent Judge granting the motion clearly demonstrates an independent evaluation or assessment of the evidence or the lack thereof against accused Bautista. In other words, the dismissal of the case was shown to be based upon the Judge's own individual conviction that there was no viable case against accused Bautista. For in the said Order, the respondent Judge stated his reasons for respecting the Secretary's recommendation. Hence, it can be deduced that he had studied and evaluated the Acting Secretary's recommendation as well as the sworn statements or evidence submitted finding the absence of probable cause to hold accused Bautista criminally liable for Murder.
>
> Therefore, contrary to the claim of the petitioner, public respondent judge did not commit grave abuse of discretion when he granted the withdrawal of Information for Murder filed against the private respondent considering that he made an independent assessment of the merits of the motion and embodied the same in at least one of his assailed Orders as mandated by existing jurisprudence (*Ark Travel Express, Inc. vs. Abrogar,* 410 SCRA 148, 158[2003]).
>
> Anent the allegation of the petitioner that he was denied due process, We also agree with the OSG that same is without factual basis. Thus:
>
> "An examination of the machine copy of the motion to withdraw information filed by the Provincial Prosecutor which

[29] Records, pp. 170-171.

> was marked as Annex 'D' clearly indicates that copy thereof was furnished to the parties concerned. Hence, the petitioner was notified [of the hearing] of said motion. In fact, the petitioner appeared in court on the date of hearing of said motion on July 30, 2004 and argued for the denial of the withdrawal of the information (Petitioner's Petition for *Certiorari*, pp. 4-5). Hence, when petitioner appeared in court and was able to contest/oppose said motion, he was afforded the opportunity to be heard on a motion derogatory to his interest."[30]

Hence, the Court of Appeals denied the Petition in this wise:

> WHEREFORE, the foregoing premises considered, the instant Petition is hereby DENIED. Accordingly, the challenged Orders of public respondent Hon. Judge Crisanto C. Concepcion, Presiding Judge of Branch 12 of the Regional Trial Court of Malolos, Bulacan, are AFFIRMED.[31]

In a Resolution dated 1 August 2006, the appellate court denied petitioner's Motion for Reconsideration of its 26 April 2006 Decision for lack of merit.[32]

Hence, the instant Petition for Review on *Certiorari* wherein petitioner raises the sole issue of:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER'S ARGUMENTS TO THE EFFECT THAT THE TRIAL JUDGE COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE GRANTED THE PROSECUTION'S MOTION WITHOUT TAKING INTO CONSIDERATION HIS EARLIER FINDING OF PROBABLE CAUSE, AND THAT THE PIECES OF EVIDENCE ON RECORD WERE MORE THAN SUFFICIENT TO ESTABLISH PROBABLE CAUSE AGAINST THE PRIVATE RESPONDENT CAN NOT BE PROPERLY RAISED IN THE PETITION FOR *CERTIORARI* PETITIONER FILED BEFORE IT.[33]

---

[30] *Rollo*, pp. 77-78.

[31] *Id.* at 79-80.

[32] *Id.* at 89.

[33] *Id.* at 130-131.

Petitioner contends that Judge Concepcion correctly found in his Order dated 14 November 2002 that, based on the facts obtaining from the records of the case, there was probable cause to justify the issuance of a warrant of arrest against private respondent. He further reasoned that while there had been a supervening event, *i.e.*, the issuance by the DOJ of its Resolution dated 8 July 2004 reversing and setting aside the Resolution dated 23 September 2002 of the Provincial Prosecutor of Bulacan and directing the immediate withdrawal of the information for murder filed against private respondent before the RTC, Judge Concepcion still was the one in full control of the case.[34] Petitioner insists that Judge Concepcion committed grave abuse of discretion in allowing the withdrawal of the Information against private respondent in his Order dated 30 July 2004; and that the Court of Appeals erred in affirming said Order in its herein assailed Decision and Resolution dated 26 April 2006 and 1 August 2006, respectively.

We deny the Petition.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[35] It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.[36]

The determination of probable cause is a function that belongs to the public prosecutor — one that, as far as crimes cognizable

[34] *Id.* at 131-134.

[35] *Cruz, Jr. v. People*, G.R. No. 110436, 27 June 1994, 233 SCRA 439, 453-454, cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, 1 June 2007, 523 SCRA 318, 335.

[36] *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

by the RTC are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor.[37] This broad prosecutorial power is, however, not unfettered, because just as public prosecutors are obliged to bring forth before the law those who have transgressed it, they are also constrained to be circumspect in filing criminal charges against the innocent. Thus, for crimes cognizable by the regional trial courts, preliminary investigations are usually conducted.[38] As defined under the law, a preliminary investigation is an inquiry or a proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.[39]

The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.[40]

In *People v. Inting*,[41] this Court aptly stated:

Judges and Prosecutors alike should distinguish the **preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released**. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant

---

[37] *People v. Court of Appeals*, 361 Phil. 492, 498 (1999), citing the Separate (Concurring) Opinion of former Chief Justice Narvasa in *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620 (1996).

[38] *People v. Court of Appeals, id.*

[39] RULES OF COURT, Rule 112, Section 1, first paragraph.

[40] *Id*., Section 4, last paragraph.

[41] G.R. No. 88919, 25 July 1990, 187 SCRA 788, 792-793.

of arrest is made by the Judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the prosecutor.[42] (Emphasis supplied.)

Under Section 1, Rule 112[43] of the Revised Rules of Court, the investigating prosecutor, in conducting a preliminary investigation of a case cognizable by the RTC, is tasked to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent therein is probably guilty thereof and should be held for trial. A preliminary investigation is for the purpose of securing the innocent against hasty, malicious and oppressive prosecution; and to protect him from an open and public accusation of a crime, as well as for the trouble, expense and anxiety of a public trial.[44]

If the investigating prosecutor finds probable cause for the filing of the Information against the respondent, he executes a certification at the bottom of the Information that, from the evidence presented, there is a reasonable ground to believe that the offense charged has been committed and that the accused is probably guilty thereof. Such certification of the investigating prosecutor is, by itself, ineffective. It is not binding on the trial court. Nor may the RTC rely on the said certification as basis for a finding of the existence of probable cause for the arrest of the accused.[45]

The preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him in making the determination of

---

[42] *Roberts, Jr. v. Court of Appeals*, *supra* note 37 at 344-345.

[43] SECTION 1. *Preliminary investigation defined; when required*. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

[44] *People v. Poculan*, G.R. Nos. 70565-67, 9 November 1988, 167 SCRA 176, 192.

[45] *People v. Inting*, *supra* note 41.

probable cause for issuance of the warrant of arrest. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge in making **his** determination.[46]

The task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence which would justify conviction.[47]

The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused, such as in the case at bar, is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[48]

A closer scrutiny of the substance of Judge Concepcion's Order dated 30 July 2004 would reveal that he reversed his earlier finding of probable cause in issuing a warrant of arrest and allowed the withdrawal of the Information against private

---

[46] *Id*.

[47] *People v. Aruta*, 351 Phil. 868, 880 (1998).

[48] *Okabe v. Gutierrez*, G.R. No. 150185, 27 May 2004, 429 SCRA 685, 706.

respondent based on the following grounds: (1) witnesses to the crime failed to categorically identify private respondent as the culprit; (2) private respondent's nephew, Joel Santos, voluntarily admitted in his affidavit that he was the one driving the car, which he borrowed from private respondent, and who accidentally hit the *pedicab* which Erlinda Baltazar and Rolando Baltazar were riding; (3) private respondent could not be held criminally liable for murder as there was no malice or intent to cause injury (*dolo*) to Erlinda Baltazar; and (4) this was just a simple case of criminal negligence or reckless imprudence resulting in homicide or less serious physical injury.[49]

Given the foregoing, Judge Concepcion's Order dated 30 July 2004 granting the withdrawal of the Information for murder against private respondent was not issued with grave abuse of discretion. There was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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" on the part of Judge Concepcion. To the contrary, Judge Concepcion came to the conclusion that there was no probable cause for private respondent to commit murder, by applying basic precepts of criminal law to the facts, allegations, and evidence on record.[50]

In *Crespo v. Mogul*,[51] we held:

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by

---

[49] *Rollo*, p. 103.

[50] *First Women's Credit Corporation v. Perez*, G.R. No. 169026, 15 June 2006, 490 SCRA 774, 778.

[51] G.R. No. 53373, 30 June 1987, 151 SCRA 462, 471.

the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[52]

We have likewise held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.[53]

In *Marcelo v. Court of Appeals*,[54] this Court ruled that, although it is more prudent to wait for a final resolution of a motion for review or reinvestigation from the secretary of justice before acting on a motion to dismiss or a motion to withdraw an information, a trial court nonetheless should make its own study and evaluation of said motion and not rely merely on the awaited action of the secretary. The trial court has the option to grant or deny the motion to dismiss the case filed by the fiscal, whether before or after the arraignment of the accused, and whether after a reinvestigation or upon instructions of the secretary who reviewed the records of the investigation, provided that such grant or denial is made from its own assessment and evaluation of the merits of the motion.

---

[52] *Martinez v. Court of Appeals,* G.R. No. 112387, 13 October 1994, 237 SCRA 575, 584.

[53] *Odin Security Agency, Inc. v. Sandiganbayan,* 417 Phil. 673, 679-680 (2001).

[54] G.R. No. 106695, 4 August 1994, 235 SCRA 39.

Our pronouncement in *Jimenez v. Jimenez*[55] is timely:

> It is . . . imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by visualizing and not denigrating constitutional rights. So it has been before. It should continue to be so.

Petitioner's arguments before the Court of Appeals can be reduced to the allegation that respondent Judge gravely erred in appreciating the evidence presented; thus, he seriously abused his discretion, an act amounting to lack or excess of jurisdiction — an error of jurisdiction, so termed. An error of jurisdiction is one in which the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or excess of jurisdiction, and which is correctible by the extraordinary writ of *certiorari.*

There being no grave abuse of discretion on the part of Judge Concepcion amounting to lack or excess of jurisdiction, we hold that the Court of Appeals committed no reversible error in dismissing the petition.

WHEREFORE, premises considered, the instant Petition for Review is *DENIED* for lack of merit. The Decision dated 26 April 2006 and Resolution dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88237 are *AFFIRMED*. Costs against petitioner.

---

[55] G.R. No. 158148, 30 June 2005, 462 SCRA 516, 528-529.

SO ORDERED.

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

EN BANC

[G.R. No. 174659. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAGA SARAPIDA MAMANTAK and LIKAD SARAPIDA TAURAK,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING, DEFINED; PENALTY. — Kidnapping is defined and punished under Article 267 of the Revised Penal Code, as amended by Republic Act (RA) 7659: ART. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death. 1. If the kidnapping or detention shall have lasted more than three days. 2. If it shall have been committed simulating public authority. 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made. 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer. The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. When the victim is killed or dies as a consequence

---

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 16 July 2008.

of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

2. ID.; ID.; ELEMENTS. — The crime has the following elements: (1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or (d) the person kidnapped or detained is a minor, female or a public official.

3. ID.; ID.; IF THE VICTIM IS A MINOR OR IS KIDNAPPED AND ILLEGALLY DETAINED FOR THE PURPOSE OF EXTORTING RANSOM, THE DURATION OF HIS DETENTION BECOMES INCONSEQUENTIAL, AND THE CRIME IS QUALIFIED AND PUNISHABLE BY DEATH. — If the victim is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. The crime is qualified and becomes punishable by death even if none of the circumstances mentioned in paragraphs 1 to 4 of Article 267 of the Revised Penal Code is present.

4. ID.; ID.; ESSENCE OF THE CRIME; LIBERTY, DEFINED. — The essence of the crime of kidnapping is the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time. And liberty is not limited to mere physical restraint but embraces one's right to enjoy his God-given faculties subject only to such restraints necessary for the common welfare.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVIDENCE TO BE BELIEVED MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS BUT MUST BE CREDIBLE IN ITSELF. — Evidence to be believed must not only proceed from the mouth

of a credible witness but must be credible in itself. The trial and appellate courts correctly ruled that the statements of Taurak and Mamantak did not deserve credence. Moreover, factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, are accorded great, if not conclusive, value when affirmed by the Court of Appeals.

6. CRIMINAL LAW; KIDNAPPING; RANSOM, DEFINED; AMOUNT OF AND PURPOSE FOR THE RANSOM ARE IMMATERIAL. — Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity. No specific form of ransom is required to consummate the felony of kidnapping for ransom as long as the ransom is intended as a bargaining chip in exchange for the victim's freedom. The amount of and purpose for the ransom is immaterial.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Rashid A. Saber for accused-appellants.

D E C I S I O N

CORONA, *J.*:

There are people who are simply incapable of feeling pity or compassion for others.

Ma. Teresa Basario must have felt a dagger deep in her heart when she lost her two-year old son, Christopher, two weeks before Christmas on December 13, 1999. And again upon being reunited with him some 16 months later when he could neither recognize her nor remember who he was.

Justice demands that those responsible for this cruel and agonizing separation of mother and child be punished to the full extent of the law.

At about 3:00 p.m. on December 13, 1999, Teresa went with Christopher and her elder sister Zenaida to a McDonald's

outlet in the KP Tower in Juan Luna St., Binondo, Manila. Teresa and Christopher looked for a vacant table while Zenaida proceeded to order their food. Shortly after Teresa took her seat, Christopher followed Zenaida to the counter. Barely had Christopher gone from his mother's sight when she realized that he had disappeared. She and her sister frantically looked for him inside and outside the premises of the fastfood outlet, to no avail. As their continued search for the child was futile, they reported him missing to the nearest police detachment.

The following day, Teresa went to several TV and radio stations to inform the public of the loss of Christopher and to appeal for help and information. Despite the publicity, however, Teresa received no word about Christopher's whereabouts. Worse, pranksters were gleefully having a field day aggravating her misery.

On February 25, 2001, Teresa received a call from a woman who sounded like a muslim. The caller claimed to have custody of Christopher and asked for ₱30,000 in exchange for the boy.

On March 27, 2001, the same muslim-sounding woman called and instructed Teresa to get a recent photo of her son from the Jalal Restaurant at the Muslim Center in Quiapo, Manila. True enough, when Teresa went there, someone gave her a recent picture of Christopher. She then contacted the mysterious woman through the cellphone number the latter had previously given her. When the woman instructed her to immediately board a ship for Mindanao, Teresa reasoned that she had not raised the ransom money yet. They then agreed to conduct the pay off in the morning of April 7, 2001 at Pitang's Carinderia in Kapatagan, Lanao del Norte.

Teresa sought the help of the Presidential Anti-Organized Crime Task Force (PAOCTF). A team was formed and Police Officer (PO)3[1] Juliet Palafox was designated to act as Teresa's niece.

Together with the PAOCTF team, Teresa left for Mindanao on April 4, 2001. On April 7, 2001, they arrived in Iligan City and proceeded to the designated meeting place.

---

[1] In some parts of the records, PO2.

At around 8:30 a.m., while Teresa and PO3 Palafox were waiting at Pitang's Carinderia, two women came. They were Raga Sarapida Mamantak and Likad Sarapida Taurak. Mamantak approached Teresa and PO3 Palafox and asked who they were waiting for. Teresa replied that they were waiting for a certain Rocma Bato, the name written at the back of the picture she received in Jalal Restaurant in Manila. She showed the photo to Mamantak who stated that she knew Bato. Mamantak then told Teresa that she would ask a cousin of Bato if the latter was already in Kapatagan. Mamantak turned to Taurak, supposedly the cousin of Bato. Taurak came near Teresa and PO3 Palafox and informed them that she had Christopher. Taurak asked Teresa and PO3 Palafox to come with her but they refused. Taurak reluctantly agreed to leave Mamantak with them while she fetched Christopher.

Several hours later, in the afternoon of the same day, Taurak returned and told Teresa that Christopher was in a nearby ice plant. She asked Teresa to go with her but the latter insisted on their agreement that the boy be handed over at the *carinderia*. Taurak relented, left and came back after several minutes with Christopher.

Upon seeing her son, Teresa cried and embraced him. However, the child was unmoved. He no longer recognized nor understood her for he could only speak in the muslim dialect. When asked who he was, the boy gave a muslim name with "Taurak" as surname.

Mamantak and Taurak interrupted Teresa and demanded the ransom money. She answered that her niece had it and pointed to PO3 Palafox. Thereafter, Mamantak and PO3 Palafox boarded a jeepney which was parked outside, under Taurak's watchful eyes. Inside the jeepney, PO3 Palafox handed the ransom money to Mamantak. At this juncture, PO3 Palafox gave the pre-agreed signal and the PAOCTF team then closed in and arrested Mamantak and Taurak.

Christopher relearned Tagalog after a month and gradually began to forget the incident. On the other hand, Teresa almost lost her sanity. At the time Christopher was kidnapped, she

was pregnant with her third child. The child, born very sickly, eventually died.

The sisters Mamantak and Taurak were charged with kidnapping for ransom under the following Information:

> That on December 13, 1999 in Binondo, Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and grouping themselves together, did then and there, willfully, unlawfully and feloniously take, carry away and deprive Christopher Basario, a two-year old minor of his liberty against his will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for his release amounting to THIRTY THOUSAND PESOS (₱30,000.00) to the damage and prejudice of Christopher Basario in said amount and such other amount as maybe awarded to him under the provisions of the Civil Code.
>
> CONTRARY TO LAW.

Mamantak and Taurak pleaded not guilty when arraigned. After pre-trial, trial ensued and the parties presented their respective evidence.

In defense, Mamantak and Taurak denied the charges against them. Taurak testified that at the time and date of the alleged kidnapping, she was peddling wares in Divisoria market, Manila. When she saw Christopher wandering about aimlessly, she talked to him but he did not seem to understand her. She took the boy under her care and waited for someone to come for him. No one did. As it was already 7:00 p.m., she brought the boy home with her to the Muslim Center in Quiapo.

The next day, she and her husband took the boy to the nearest police outpost but no one was there so they just brought the boy to their stall. They opted to keep the boy until his parents could claim him.

On February 17, 2001, Taurak brought the child to Maganding, Sultan Kumander, Lanao del Sur. Sometime later, Teresa contacted her and asked for Christopher's picture for confirmation. It was at this point that Taurak arranged a meeting at Pitang's Carinderia in Kapatagan, Lanao del Norte on April 7, 2001.

She did not bring the boy at first as a precautionary measure. Only after confirming that Teresa was the boy's mother did she relinquish custody to her. However, she was shocked when members of the PAOCTF suddenly arrested her. She protested because she was innocent. There were no charges against her nor was there a warrant for her arrest.

Mamantak corroborated her sister Taurak's testimony. She claimed that she was at Nunungan, Lanao del Norte on December 13, 1999. At that time, she did not know the exact whereabouts of Taurak who was in Manila and whom she had not seen for some time. They met again on April 7, 2001 at Pitang's Carinderia but only by chance. She happened to be there when Taurak came. When Teresa arrived later, Taurak talked to her and then left, returning after a few hours with Christopher whom Mamantak saw for the first time. Taurak told her that she had found the boy and was returning him to his mother. Mamantak stayed in the *carinderia* all the while, waiting for her ride home at 4:00 p.m. She was stunned when PAOCTF members suddenly arrested her and her sister as she had not committed any crime and there was no warrant for her arrest.

After evaluating the respective evidence of the parties, the trial court rendered a decision[2] on November 30, 2004 finding Taurak and Mamantak guilty as charged:

> WHEREFORE, judgment is hereby rendered finding both accused LIKAD SARAPIDA TAURAK and accused RAGA SARAPIDA [MAMANTAK] GUILTY beyond reasonable doubt of the crime of Kidnapping for Ransom as amended by RA No. 7659 and both are hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. Both accused are hereby jointly and severally ordered to pay the Christopher Basario represented by the mother, [Ma.] Teresa Basario the amount of PHP50,000.00 as compensatory damages and PHP50,000.00 as moral damages. With costs against the accused.
>
> Both accused are given credit for the preventive imprisonment undergone by them during the pendency of this case.

---

[2] Penned by Acting Presiding Judge Amor A. Reyes of the Regional Trial Court of Manila, Branch 43. Court of Appeals Records, pp. 23-39.

SO ORDERED.[3]

Taurak and Mamantak appealed to the Court of Appeals. In a decision[4] dated March 31, 2006, the appellate court ruled that the trial court erred in not considering the demand for ₱30,000 as a demand for ransom. Such circumstance required the imposition of the death penalty. Thus, the appellate court affirmed the conviction of Taurak and Mamantak with modification amending the penalty from *reclusion perpetua* to death.[5] Pursuant to Section 13, Rule 124 as amended by Administrative Matter No. 00-5-03-SC, the appellate court certified the case to this Court and accordingly ordered the elevation of the records.[6]

We affirm the Court of Appeals, with a modification of penalty.

Kidnapping is defined and punished under Article 267 of the Revised Penal Code, as amended by Republic Act (RA) 7659:

> ART. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.
>
> 1. If the kidnapping or detention shall have lasted more than three days.
> 2. If it shall have been committed simulating public authority.
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

---

[3] *Id*.

[4] Penned by Associate Justice Roberto A. Barrios (deceased) and concurred in by Mario L. Guariña III and Santiago Javier Ranada (retired) of the Fifth Division of the Court of Appeals. *Rollo*, pp. 2-20.

[5] *Id*.

[6] *Id*.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The crime has the following elements:

(1) the offender is a private individual; not either of the parents of the victim[7] or a public officer who has a duty under the law to detain a person;[8]

(2) he kidnaps or detains another, or in any manner deprives the latter of his liberty;

(3) the act of detention or kidnapping must be illegal and

(4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c)any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or (d) the person kidnapped or detained is a minor, female or a public official.

If the victim is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. The crime is qualified and becomes punishable by death even if none of the circumstances

---

[7] When the victim is a minor and the accused is any of the parents, the crime is defined and penalized under the second paragraph of Article 271 of the Revised Penal Code.

[8] A public officer (such as policeman) who has a duty under the law to detain a person but detains a person without legal ground is liable for arbitrary detention defined and penalized under Article 124 of the Revised Penal Code. Thus, a public officer who has no legal duty to detain a person may be prosecuted for illegal detention and kidnapping.

mentioned in paragraphs 1 to 4 of Article 267 of the Revised Penal Code is present.[9]

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it.[10] It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time.[11] And liberty is not limited to mere physical restraint but embraces one's right to enjoy his God-given faculties subject only to such restraints necessary for the common welfare.[12]

The two-year-old Christopher suddenly disappeared in Binondo, Manila and was recovered only after almost 16 months from Taurak and Mamantak (both of them private individuals) in Kapatagan, Lanao del Norte. During the entire time the boy was kept away from his mother, he was certainly deprived or restrained of his liberty. He had no means, opportunity or capacity to leave appellants' custody and return to his family on his own. He had no choice but to stay with total strangers, go with them to a far away place and learn a culture and dialect alien to him. At such a very tender age, he was deprived of the liberty to enjoy the company and care of his family, specially his mother.

Taurak unlawfully kept the child under her control and custody and even brought him to Lanao del Norte. She demanded ₱30,000 in exchange for his return to his mother. On the other hand, Mamantak's actions (*e.g.*, her presence in the *carinderia* and her acceptance of the ransom) showed without doubt that she was aiding her sister and was acting in concert with her. These were the identical factual findings of both the trial and appellate courts. There is no reason to disturb them as they are sufficiently supported by evidence.

---

[9] *People v. Jatulan*, G.R. No. 171653, 24 April 2007, 522 SCRA 174.

[10] *Id*.

[11] *Id*.

[12] See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919).

Taurak's story that she merely gave Christopher refuge was incredible. It was like the apocryphal tale of a man accused of theft of large cattle; his excuse was that he saw a piece of rope and brought it home not knowing that there was a cow tied to the other end. She never even tried to bring the boy to the proper authorities or surrender him to the Department of Social Welfare and Development's social workers in her *barangay* or in the city hall at any time during the 16 months he was with her. And how could Teresa have initiated her phone conversations with Taurak when they were total strangers to each other?

Similarly, Mamantak's account that she was at Pitang's Carinderia only by coincidence and that it was only there that she first saw Christopher invites nothing but disbelief. The unequivocal testimonies of the prosecution witnesses on her role in arranging for the payment of ransom and the release of the kidnap victim (*e.g.*, confirming the identity of Teresa and demanding and receiving the ransom money) showed otherwise. The evidence clearly established that Mamantak was a principal in the kidnapping of Christopher.

Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.[13] The trial and appellate courts correctly ruled that the statements of Taurak and Mamantak did not deserve credence. Moreover, factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, are accorded great, if not conclusive, value when affirmed by the Court of Appeals.[14]

The Court of Appeals considered the demand for ₱30,000 as a qualifying circumstance which necessitated the imposition of the death penalty. On the other hand, the trial court deemed the amount as too measly, compared to what must have been actually spent for the care and subsistence of Christopher for almost two years. It therefore treated the amount not as ransom but as a reimbursement of expenses incurred for taking care of

---

[13] *People v. Alba*, 326 Phil. 519 (1996).

[14] *People v. Garalde*, G.R. No. 173055, 13 April 2007, 521 SCRA 327.

the child. (Kidnappers in Mindanao today call it reimbursement for "board-and-lodging.")

Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.[15] No specific form of ransom is required to consummate the felony of kidnapping for ransom as long as the ransom is intended as a bargaining chip in exchange for the victim's freedom.[16] The amount of and purpose for the ransom is immaterial.

In this case, the payment of ₱30,000 was demanded as a condition for the release of Christopher to his mother. Thus, the Court of Appeals correctly considered it as a demand for ransom.

One final point of law. While the penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code[17] is death, RA 9346[18] has banned the death penalty and reduced all death sentences to *reclusion perpetua* without eligibility for parole. Pursuant to this law, we reduce the penalty imposed on appellants from death to *reclusion perpetua,* without eligibility for parole.

In line with prevailing jurisprudence, the award of ₱50,000 civil indemnity[19] was proper. Pursuant to *People v. Garalde*,[20] the award of ₱50,000[21] moral damages is increased to ₱200,000 considering the minority of Christopher. Moreover, since the crime was attended by a demand for ransom, and by way of example or correction, Christopher is entitled to ₱100,000 exemplary damages.[22]

---

[15] *People v. Jatulan*, *supra*.

[16] *Id*.

[17] As amended by RA 7659.

[18] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[19] See *People v. Solangon*, G.R. No. 172693, 21 November 2007; *People v. Yambot*, 397 Phil. 23, (2000).

[20] *Supra* note 12.

[21] See *People v. Solangon*, *supra*; *People v. Baldogo*, 444 Phil. 35, 66 (2003); *People v. Garcia*, 424 Phil. 158, 194 (2002).

[22] *Id*.

WHEREFORE, the appeal is hereby *DENIED*. The March 31, 2006 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00729 is *AFFIRMED* with *MODIFICATION*. Appellants Raga Sarapida Mamantak and Likad Sarapida Taurak are hereby found guilty beyond reasonable doubt of the crime of kidnapping for ransom for which they are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. They are further ordered to pay, jointly and severally, ₱50,000 civil indemnity, ₱200,000 moral damages and ₱100,000 exemplary damages to their young victim Christopher Basario.

Costs against appellants.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

Nachura, J., no part.

Azcuna and *Tinga, JJ.,* on official leave.

Reyes, J., on leave.

THIRD DIVISION

[G.R. No. 174698. July 28, 2008]

AURORA TAMAYO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and HEIRS OF PEDRO SOTTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; WHEN MAY BE MODIFIED; RULE. — Section 7, Rule 120

of the Revised Rules of Criminal Procedure provides for the rules in modifying a judgment of conviction, to wit: SEC. 7. *Modification of Judgment*. — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation. As can be gleaned from the foregoing provision, a judgment of conviction may be modified or set aside **only if the judgment is not yet final. Further, a judgment becomes final when no appeal is seasonably perfected**.

2. ID.; ID.; APPEAL; WHEN AND HOW TO BE TAKEN. — Under the Rules of Court, judgments of the Court of Appeals in criminal cases must be appealed by the accused within fifteen (15) days from service of a copy thereof upon the accused or her counsel either (a) by filing a motion for reconsideration, or (b) by filing a motion for new trial, or (c) by filing a petition for review on *certiorari* to this Court.

3. ID.; ID.; JUDGMENT WHICH IS FINAL AND EXECUTORY CAN NO LONGER BE DISTURBED, ALTERED OR MODIFIED EXCEPT TO CORRECT CLERICAL ERRORS OR TO MAKE *NUNC PRO TUNC* ENTRIES; RATIONALE. — Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it. No court, not even this Court, has the power to revive, review, or modify a judgment which has become final and executory. This rule is grounded on the fundamental principle of public policy and sound practice that the judgment of the court must become final at some definite date fixed by law. It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.

4. CRIMINAL LAW; ESTAFA; CRIMINAL LIABILITY THEREFOR IS NOT AFFECTED BY A COMPROMISE, FOR IT IS A PUBLIC OFFENSE WHICH MUST BE PROSECUTED AND PUNISHED BY THE GOVERNMENT ON ITS OWN MOTION. — It is a hornbook doctrine in our

criminal law that the criminal liability for *estafa* is not affected by a compromise, for it is a public offense which must be prosecuted and punished by the government on its own motion, even though complete reparation should have been made of the damage suffered by the private offended party. Since a criminal offense like *estafa* is committed against the State, the private offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the crime.

5. ID.; ID.; REIMBURSEMENT OR RESTITUTION TO THE OFFENDED PARTY OF THE SUMS SWINDLED AFTER THE COMMISSION OF THE CRIME AFFECTS ONLY THE CIVIL LIABILITY OF THE OFFENDER BUT DOES NOT EXTINGUISH HIS CRIMINAL LIABILITY. — In *Firaza v. People* and *Recuerdo v. People*, we emphasized that in a crime of *estafa*, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. Thus: The reimbursement or restitution to the offended party of the sums swindled by the petitioner does not extinguish the criminal liability of the latter. It only extinguishes *pro tanto* the civil liability. Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party. The consent of the private complainant to petitioner's payment of her civil liability *pendent lite* does not entitle the latter to an acquittal. Subsequent payments does not obliterate the criminal liability already incurred. Criminal liability for estafa is not affected by a compromise between petitioner and the private complainant on the former's civil liability. Likewise, in *Metropolitan Bank and Trust Company v. Tonda*, we held that in a crime of *estafa*, reimbursement of, or compromise as to, the amounts misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability.

6. REMEDIAL LAW; EVIDENCE; ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THE TRUTH THEREOF; CASE AT BAR. — It is a basic principle in our rules on evidence that he who alleges a fact has the burden of proving the truth thereof. It must also be stressed that the evidence to prove

this fact must be clear, positive and convincing. In the instant case, it is incumbent upon petitioner to prove that she and Pedro entered into a compromise as regards the present case. Although petitioner attached to her instant petition a handwritten receipt which she claims to be the proof of compromise between her and Pedro, she, nonetheless, failed to prove with convincing evidence that the receipt was genuine. Petitioner did not submit any proof to show that the signatures of Pedro and of the witnesses in the receipt were authentic.

7. LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; MISTAKE AND NEGLIGENCE OF A COUNSEL BINDS HIS CLIENT; EXCEPTIONS. — Mistake and negligence of a counsel bind his client. The basis is the tenet that an act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of a counsel may result in the rendition of an unfavorable judgment against his client. A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party will do is to invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction. Concededly, the foregoing rule admits of exceptions. Hence, in cases where (1) the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law, the client is not bound by his counsel's mistakes.

8. CIVIL LAW; DAMAGES; AWARD OF MORAL DAMAGES, PROPER IN CASE AT BAR. — The RTC was correct in awarding moral damages in the amount of ₱10,000.00 because it appears in the record that petitioner acted in evident bad faith and succeeded in defrauding the spouses Sotto. Petitioner introduced herself to the spouses Sotto as an assembler of a jeep when in fact she was not. She even showed to spouses Sotto a gorgeous *Malaguena*-type passenger jeep to convince them that she could really assemble and deliver to them such kind of jeep within a month at the low price of ₱210,000.00.

Because of petitioner's false pretenses, the spouses Sotto were induced to make partial payments for the same kind of jeep. Petitioner also failed to show that the jeep was indeed being assembled. When Pedro requested petitioner to show him the jeep, petitioner replied that it was still being assembled in Laguna. But when Pedro asked petitioner to accompany him to Laguna to see the jeep, petitioner refused and even tried to hide. Further, spouses Sotto were forced to hire the services of a lawyer who immediately sent letters to petitioner demanding the return of the money they paid for the jeep. Upon receipt of the said letter, petitioner went to the house of spouses Sotto and promised to return the money, but she failed to do so.

9. CRIMINAL LAW; ESTAFA; PENALTY. — Article 315, paragraph 1 of the Revised Penal Code, provides for the penalty in *estafa* cases in which the amount defrauded exceeds ₱22,000.00, as in this case, to wit: ART 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: *1st*. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and **if such amount exceeds the latter sum,** the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. The penalty prescribed by Article 315 is composed of two, not three periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed, forming one period for each of the three portions. Applying the latter provisions, the maximum, medium and minimum periods of the penalty given are: Maximum — 6 years, 8 months, 21 days to 8 years, Medium — 5 years, 5 months, 11 days, to 6 years, 8 months, 20 days, Minimum — 4 years, 2 months, 1 day to 5 years, 5 months, 10 days.

APPEARANCES OF COUNSEL

E.M. Cruz & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] petitioner Aurora Tamayo seeks to set aside the Order dated 19 September 2006 of the Tarlac City Regional Trial Court (RTC), Branch 63, in Criminal Case No. 8611.[2] In said Order, the RTC denied petitioner's motion to suspend the execution of its Decision dated 24 October 1997 in Criminal Case No. 8611 convicting her of the crime of *Estafa*,[3] on the ground that such Decision, which has been affirmed *in toto* by the Court of Appeals, has become final and executory.

The operative facts are herein summarized.

On 15 August 1994, an Information[4] was filed before the RTC charging petitioner and her friend, Erlinda Anicas (Anicas), with *estafa* under Article 315 of the Revised Penal Code, thus:

That on or before May 20, 1994 in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of deceit and with intent to defraud, did then and there willfully, unlawfully and feloniously, pretended themselves to be assembler of passenger jeepney and was able to convince Mr. and Mrs. Pedro Sotto of Maligaya, Maliwalo, Tarlac, Tarlac to have one unit of passenger jeep assembled for them for a price of ₱120,000.00 and once in possession of the said amount, far from complying with their obligation to assemble one unit of passenger jeepney for Mr. and Mrs. Pedro Sotto, misappropriated

---

[1] *Rollo*, pp. 9-17.

[2] *Id.* at 34.

[3] Penned by Presiding Judge Arsenio P. Adriano; CA *rollo*, pp. 55-60.

[4] Records, p. 1.

the same to their own personal use and benefit and inspite of repeated demands, said accused failed and refused, and still fails and refuses to return the amount of ₱120,000.00 nor to deliver the passenger jeepney to the complainants to the damage and prejudice of the latter for more than ₱120,000.00, Philippine Currency.

Petitioner was later apprehended while Anicas remained at large. When arraigned on 20 April 1995, petitioner, with the assistance of *counsel de parte,* pleaded "Not guilty" to the charge.[5] Trial on the merits ensued.

The prosecution presented as witnesses herein private complainants, spouses Pedro and Juanita Sotto (spouses Sotto). Their testimonies, woven together, bear the following:

Sometime in May 1993, petitioner and Anicas went to the house of spouses Sotto at Barangay Maliwalo, Tarlac City. Petitioner and Anicas introduced themselves to spouses Sotto as assemblers of passenger jeeps payable on installment basis. After a brief conversation with the spouses Sotto, petitioner and Anicas left.[6]

On 1 June 1993, petitioner and Anicas returned to the house of spouses Sotto on board a *Malaguena*-type passenger jeep. Petitioner and Anicas showed to spouses Sotto the said jeep and thence proposed to assemble for them such kind of jeep at a price of ₱210,000.00[7] to be delivered after a month. Allured by the beauty of the jeep and its low price, spouses Sotto agreed to the proposal of petitioner and Anicas.[8]

Thereafter, spouses Sotto made a series of partial payments to petitioner and Anicas in the total amount of ₱120,000.00, *viz*: (1) ₱30,000.00 on 2 June 1993; (2) ₱20,000.00 on 4 June 1993; (3) ₱10,000.00 on 7 June 1993; (4) ₱30,000.00 on 24 June 1993; and (5) ₱30,000.00 on 30 June 1993.[9]

---

[5] *Id*. at 32.

[6] TSN, 20 July 1995, pp. 7-10; TSN, 17 August 1995, pp. 46-48.

[7] The agreed total purchase price of the jeep was ₱210,000.00 and not ₱120,000.00 as alleged in the information.

[8] TSN, 20 July 1995, pp. 10-12; TSN, 17 August 1995, pp. 48-50.

[9] *Id*. at 12-17; *id*. at 50-52.

After a month, Pedro Sotto asked petitioner to show him the jeep but petitioner told him that it was still being assembled in Laguna. Pedro then requested petitioner to accompany him to Laguna to inspect the jeep but petitioner refused and even tried to hide.[10]

Sensing that something fishy was going on, spouses Sotto sought the services of a lawyer who immediately sent letters to petitioner and Anicas demanding the return of ₱120,000.00. Upon receipt of the said letters, petitioner and Anicas went to the house of spouses Sotto and assured the latter they would return the money. Petitioner and Anicas, however, failed to return the money to the spouses Sotto. Subsequently, the spouses Sotto filed a complaint for *estafa* against petitioner and Anicas.[11]

The prosecution also adduced documentary evidence to bolster the testimonies of its witnesses, to wit: (1) receipts signed by petitioner and Anicas attesting that petitioner and Anicas received from Pedro several amounts totaling ₱120,000.00 as partial payment for the assembly of a passenger jeep (Exhibits A and B);[12] (2) a demand letter sent by the counsel of the spouses Sotto to petitioner and Anicas admonishing the two to return the amount of ₱120,000.00 to the spouses Sotto (Exhibit C);[13] (3) reply-letters of the counsel for petitioner and Anicas stating that the said demand letter was received by petitioner and Anicas (Exhibits D, E, and F);[14] and (4) complaint-affidavit for *estafa* filed by spouses Sotto against petitioner and Anicas.[15]

For its part, the defense presented the lone testimony of petitioner to refute the foregoing accusation. Petitioner disclaimed any liability to the spouses Sotto.

---

[10] *Id*. at 17-18; *id*. at 52-54.

[11] *Id*. at 23-26; *id*. at 54-56.

[12] Records, pp. 41-42.

[13] *Id*. at 43-44.

[14] *Id*. at 45-48.

[15] *Id*. at 49.

Petitioner testified that sometime in April 1992, Pedro and Anicas went to her house and requested her to look for a mechanic who can assemble a *Malaguena*-type passenger jeep. She introduced Pedro to a mechanic named Ernesto Ravana (Ravana) who agreed to assemble a *Malaguena*-type passenger jeep for Pedro in the amount of ₱120,000.00.[16]

Subsequently, Pedro handed to her an amount of ₱60,000.00 which she would give to Ravana as partial payment for the assembly of the jeep. She turned over the said amount to Ravana. Later, Pedro told her that he was no longer interested in the assembly of the jeep because he had no more money to pay the balance of its price, and that he wanted to get back the money he had paid for the jeep. She told Pedro that she would reimburse him the amount he gave to Ravana. Afterwards, she gave the amount of ₱60,000.00 to Ravana for the continuation of the jeep's assembly.[17]

Thereafter, Ravana told her to pay the balance of the jeep's price or he would discontinue its assembly. When she failed to pay the balance, Ravana avoided her and hid.[18]

She filed a complaint against Ravana before the officials of the *barangay* where Ravana resided. During their confrontation at the *barangay* hall, she and Ravana entered into an agreement whereby Ravana acknowledged an obligation of ₱120,000.00 to her and Ravana promised to reimburse her the said amount on a ₱1,000.00 per month basis. Ravana failed to comply with this agreement. Hence, she sued Ravana for *estafa* in court. Since then, Ravana has gone into hiding.[19]

After trial, the RTC rendered a Decision on 24 October 1997 convicting petitioner of *estafa* under Article 315 of the Revised Penal Code.[20] The trial court imposed on petitioner an

---

[16] TSN, 5 July 1996, pp. 4-7.

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

[18] *Id.* at 12.

[19] *Id.* at 13-15.

[20] CA *rollo*, pp. 55-60.

indeterminate penalty ranging from 4 years 2 months and 1 day of *prision correccional,* as minimum, to 17 years of *reclusion temporal*, as maximum. Petitioner was also ordered to pay the spouses Sotto the amounts of ₱120,000.00, as actual damages, and ₱10,000.00, as moral damages. The dispositive portion of the decision reads:

> In view of the foregoing, the Court finds the accused Aurora Tamayo guilty beyond reasonable doubt of the crime of estafa, defined and penalized under Article 315, of the Revised Penal Code, and is hereby sentenced to suffer a prison term of four (4) years, two (2) months and one (1) day of *prision correccional* maximum, as the minimum to seventeen (17) years of *reclusion temporal* medium, as the maximum, and to indemnify the complainants Pedro and Juanita Sotto, the amounts of ₱120,000.00 as actual damages, and ₱10,000.00 as reasonable moral damages. The accused is also ordered to pay the costs of this proceeding.

Petitioner appealed the RTC Decision with the Court of Appeals. Meanwhile, on 30 May 2002, Pedro passed away.[21]

On 22 April 2004, the Court of Appeals promulgated its Decision affirming *in toto* the RTC Decision,[22] thus:

> In fine, we hold that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. After a careful review of the records, the Court finds that the trial court was justified in finding the accused-appellant guilty as charged.
>
> WHEREFORE, the appealed decision of the court *a quo* dated October 24, 1997 is AFFIRMED. Costs against the accused-appellant.

On 13 December 2005, the Court of Appeals issued a Resolution declaring its Decision dated 22 April 2004 final and executory as of 1 June 2004 and ordering the same to be entered in the Book of Entries of Judgments,[23] *viz*:

> In view of the report of the Court's Judicial Records Division dated November 21, 2005 that **no motion for reconsideration before**

[21] *Rollo*, p. 20.

[22] *Id*. at 37-44.

[23] CA *rollo*, pp. 101-102.

this court nor petition before the Honorable Supreme Court have been filed despite appellant's receipt of copy of this Court's Decision on May 14, 2004.

(1) The Decision dated April 22, 2004 is declared to have become FINAL and EXECUTORY as of June 1, 2004; and

(2) The same is ordered ENTERED in the Book of Entries of Judgments.

On 13 June 2006, the RTC issued an Order directing the arrest of petitioner for him to serve the sentence imposed in its Decision dated 24 October 1997.[24] The Order reads:

Considering the Decision of the Court of Appeals in CA-G.R. CR No. 21762 (Crim. Case No. 8611) promulgated on April 22, 2004 has already become final, let an order of arrest be issued against Aurora Tamayo to serve the sentence of Four (4) Years, Two (2) Months and One (1) Day of *prision correccional* maximum, as the minimum to Seventeen (17) Years of *reclusion temporal* medium, as the maximum.

On 18 August 2006, petitioner filed a Manifestation before the RTC alleging that while the instant case was pending with the Court of Appeals, she and Pedro had settled their disputes and that Pedro would no longer pursue the present case against her. She prayed that the implementation of the RTC Order dated 13 June 2006 be cancelled.[25]

On 22 August 2006, petitioner filed a Motion to Suspend the Writ of Execution of the RTC Order dated 13 June 2006 on the ground that supervening facts had occurred making the execution of the said Order unjust.[26] She explained in this wise:

DISCUSSION

Accused received a copy of the Order dated June 23, 2006, granting execution on 16 June 2006. Her former Counsel never informed her when the judgment became final on April 22, 2004.

---

[24] *Rollo*, p. 29.

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

[26] *Id*. at 25-28.

What actually happened is that when this case was pending review in the Court of Appeals, the Private Complainant compromised with the accused resulting to the receipt by the former first the amount of ₱10,000.00 on March 18, 2001; and another amount of ₱110,000.00 on March 22, 2001, binding herself to dismiss the appealed CA G.R. No. 21762 (Crim. Case No. 8611). Xerox copy of said receipt is hereto attached as Annex 1 and Annex 2, respectively, both duly signed by Private Complainant. A copy thereof had been furnished Atty. Mergas but he did not take the trouble to present the same in the Court of Appeals, to the great damage and prejudice of herein accused. This negligence of counsel cannot be attributed to the accused.

x x x x x x x x x

WHEREFORE, premises duly considered, it is respectfully prayed that the Writ of Execution assailed herein be suspended in the meantime, allowing the accused to present evidence warranting such suspension or dismissal of this case against accused herein. She likewise prays for any other relief and remedy consistent with law, justice and equity.

On 19 September 2006, the RTC issued an Order denying petitioner's motion on the ground that the Decision of the Court of Appeals dated 22 April 2004 was already final and executory,[27] *viz*:

After the decision of the Court of Appeals became final, affirming the conviction of accused, the records were returned to this Court for execution of the judgment.

This Court then issued an order of arrest of the accused Aurora Tamayo for her to serve the sentence. Now comes the motion to suspend the writ of execution.

This Court cannot do anything. Nothing could be done about a final judgment, except to execute it.

WHEREFORE, for lack of merit, the motion to suspend the execution is denied. The Commonwealth Insurance Company should produce the body of the accused Aurora Tamayo and explain within thirty (30) days from receipt of this order why no judgment should

---

[27] *Id*. at 34.

be rendered against her bond. After the lapse of said period and for non-compliance, the Court will issue a judgment against the bond.

On 2 November 2006, petitioner filed the instant petition before us raising a single issue, to wit:

WHETHER THE DECISION DATED 22 APRIL 2004 OF THE COURT OF APPEALS AFFIRMING PETITIONER'S CONVICTION FOR ESTAFA, AFTER HAVING BEEN DECLARED AS FINAL AND EXECUTORY, CAN BE MODIFIED OR SET ASIDE IN LIGHT OF THE COMPROMISE AGREEMENT BETWEEN PETITIONER AND PEDRO.

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides for the rules in modifying a judgment of conviction, to wit:

SEC. 7. *Modification of Judgment*. — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

As can be gleaned from the foregoing provision, a judgment of conviction may be modified or set aside **only if the judgment is not yet final**. Further, **a judgment becomes final when no appeal is seasonably perfected**.

Under the Rules of Court, judgments of the Court of Appeals in criminal cases must be appealed by the accused within fifteen (15) days from service of a copy thereof upon the accused or her counsel[28] either (a) by filing a motion for reconsideration,[29] or (b) by filing a motion for new trial,[30] or (c) by filing a petition for review on *certiorari* to this Court.[31]

---

[28] RULES ON CRIMINAL PROCEDURE, Rule 122, Section 6; *REMEDIAL LAW COMPENDIUM*, Florenz D. Regalado, Volume II (2004 Ed.), p. 632.

[29] RULES ON CRIMINAL PROCEDURE, Rule 124, Section 16.

[30] *Id*., Section 14.

[31] *Id*., Rule 125, Section 2, in relation to Rule 45, Section 2.

In its Resolution dated 13 December 2005,[32] the Court of Appeals noted that, based on its Judicial Records Division, petitioner did not file a motion for reconsideration or new trial of its Decision dated 22 April 2004 despite her receipt of its copy on 14 May 2004. Neither did petitioner file a petition for review of such decision before this Court within the period as aforementioned. Thus, it declared its Decision dated 22 April 2004 as final and executory as of 1 June 2004, and ordered the same to be entered in the Book of Entries of Judgments. The Court of Appeals also issued a Certificate of Entry of Judgment which attested that, as of 1 June 2004, its Decision dated 22 April 2004 in the instant case had become final and executory, and that it was already recorded in the Book of Entries of Judgments on the same date.[33]

It is clear from the foregoing that petitioner did not appeal the Decision of 22 April 2004 of the Court of Appeals despite her, or her former counsel's, receipt of the same. Petitioner does not deny the veracity of the facts stated in the Resolution dated 13 December 2005. Consequently, the Decision dated 22 April 2004 of the Court of Appeals affirming petitioner's conviction for *estafa* has already attained finality. As such, it cannot be modified or set aside anymore in accordance with Section 7, Rule 120 of the Revised Rules of Criminal Procedure.

Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries.[34] Nothing further can be done to a final judgment except to execute it.[35] No court, not even this Court, has the power to revive, review, or modify a judgment which has become

---

[32] CA *rollo,* p. 101.

[33] *Id.* at 102.

[34] *Bearneza v. National Labor Relations Commission*, G.R. No. 146930, 11 September 2006, 501 SCRA 372, 375; *Berboso v. Court of Appeals*, G.R. Nos. 141593-94, 12 July 2006, 494 SCRA 583, 603-604; *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, 8 June 2006, 490 SCRA 380, 416-417.

[35] *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 528.

final and executory.[36] This rule is grounded on the fundamental principle of public policy and sound practice that the judgment of the court must become final at some definite date fixed by law.[37] It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.[38]

Petitioner, nonetheless, claims that she and Pedro entered into a compromise while the instant case was pending appeal with the Court of Appeals. Pursuant to the compromise, she reimbursed to Pedro the amount of ₱120,000.00, which the latter paid for the assembly of the jeep; while Pedro, in turn, agreed to dismiss the present case. She argues that the execution of the Decision dated 22 April 2004 of the Court of Appeals would be unjust and inequitable because, in accordance with the compromise, she already returned to Pedro the latter's money and Pedro expressly agreed to dismiss the instant case against her. She asserts that the compromise extinguished her criminal and civil liability for *estafa*.[39]

It is a hornbook doctrine in our criminal law that the criminal liability for *estafa* is not affected by a compromise, for it is a public offense which must be prosecuted and punished by the government on its own motion, even though complete reparation should have been made of the damage suffered by the private offended party.[40] Since a criminal offense like *estafa* is committed against the State, the private offended party may not waive or

---

[36] *Dinglasan, Jr. v. Court of Appeals*, G.R. No. 145420, 19 September 2006, 502 SCRA 253, 266.

[37] *Filipro, Inc. v. Permanent Savings & Loan Bank*, G.R. No. 142236, 27 September 2006, 503 SCRA 430, 438.

[38] *Rigor v. Tenth Div. of Court of Appeals*, G.R. No. 167400, 30 June 2006, 494 SCRA 375, 383.

[39] *Rollo*, pp. 9-17.

[40] *Firaza v. People*, G.R. No. 154721, 22 March 2007, 518 SCRA 681, 694; *Recuerdo v. People*, G.R. No. 168217, 27 June 2006, 493 SCRA 517, 536; *Metropolitan Bank and Trust Company v. Tonda*, G.R. No. 134436, 338 SCRA 254, 269.

extinguish the criminal liability that the law imposes for the commission of the crime.[41]

In *Firaza v. People*[42] and *Recuerdo v. People*,[43] we emphasized that in a crime of *estafa*, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. Thus:

> The reimbursement or restitution to the offended party of the sums swindled by the petitioner does not extinguish the criminal liability of the latter. It only extinguishes *pro tanto* the civil liability. Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party. The consent of the private complainant to petitioner's payment of her civil liability *pendent lite* does not entitle the latter to an acquittal. Subsequent payments does not obliterate the criminal liability already incurred. Criminal liability for estafa is not affected by a compromise between petitioner and the private complainant on the former's civil liability.

Likewise, in *Metropolitan Bank and Trust Company v. Tonda*,[44] we held that in a crime of *estafa*, reimbursement of, or compromise as to, the amounts misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability, *viz*:

> [I]t is too well-settled for any serious argument that whether in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability or relieve him from the penalty prescribed by law for the offense committed, because both crimes are public offenses against the people that must be prosecuted and penalized by the Government on its own motion, though complete reparation

---

[41] *People v. Benitez*, 108 Phil. 920, 922 (1960).

[42] *Supra* note 40.

[43] *Id*.

[44] *Id*.

should have been made of the damage suffered by the offended parties x x x.

As in this case, the alleged compromise between petitioner and Pedro, wherein petitioner allegedly reimbursed to Pedro the amount swindled in exchange for Pedro's consent to dismiss the instant case, does not extinguish petitioner's criminal liability for *estafa*.

With regard to the effect of the alleged compromise on petitioner's civil liability, it is true, as held in the foregoing cases, that a compromise extinguishes *pro tanto* the civil liability of an accused. However, such rule cannot be applied in favor of petitioner.

It is a basic principle in our rules on evidence that he who alleges a fact has the burden of proving the truth thereof.[45] It must also be stressed that the evidence to prove this fact must be clear, positive and convincing.[46]

In the instant case, it is incumbent upon petitioner to prove that she and Pedro entered into a compromise as regards the present case. Although petitioner attached to her instant petition a handwritten receipt[47] which she claims to be the proof of compromise between her and Pedro, she, nonetheless, failed to prove with convincing evidence that the receipt was genuine. Petitioner did not submit any proof to show that the signatures of Pedro and of the witnesses in the receipt were authentic.

Further, Juanita and counsel for the spouses Sotto, Atty. Servillano Santillan, have expressly and consistently denied in their Comment on,[48] Rejoinder to[49] and Memorandum on[50] the

---

[45] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.,* G.R No. 152613 & No. 152628, 23 June 2006, 429 SCRA 355, 379; *Bejoc v. Cabreros,* G.R. No. 145849, 22 July 2005, 464 SCRA 78, 86-87; *Joson v. Mendoza,* G.R. No. 144071, 25 August 2005, 468 SCRA 95, 105.

[46] *Id*.

[47] *Rollo,* p. 36.

[48] *Id.* at 46-48.

[49] *Id.* at 55-58.

[50] *Id.* at 128-132.

instant petition that a compromise took place between petitioner and Pedro, and that the latter received money from petitioner. They asserted that the receipt was falsified or fictitious.

In sum, petitioner failed to discharge his burden of proving through convincing evidence that she and Pedro had entered into a compromise.

Petitioner also avers that she informed her former counsel, namely, Atty. Edwin Mergas (Atty. Mergas), of the alleged compromise, but the latter failed to relay the same to the Court of Appeals for the dismissal of the instant case. She contends that she cannot be bound by such negligence of Atty. Mergas.[51]

Mistake and negligence of a counsel bind his client. The basis is the tenet that an act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of a counsel may result in the rendition of an unfavorable judgment against his client.[52]

A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party will do is to invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction.[53]

Concededly, the foregoing rule admits of exceptions. Hence, in cases where (1) the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law, the client is not bound by his counsel's mistakes.[54]

---

[51] *Id.* at 9-17.

[52] *Ceniza-Manantan v. People*, G.R. No. 156248, 28 August 2007, 531 SCRA 364, 379-380.

[53] *Id.*

[54] *Id.* at 380.

Tested against these guidelines, we find that petitioner's case falls within the general rule rather than the exceptions.

Atty. Mergas had sufficiently performed his duties in defending petitioner. During the trial, the RTC issued an Order dated 29 November 1996 declaring petitioner's right to continue her direct testimony given in court and her right to present evidence was waived because of petitioner's constant absences in the hearings.[55] Atty. Mergas, as the newly hired lawyer of petitioner, immediately filed an entry of appearance and a motion for reconsideration of the said order to preserve the rights of petitioner.[56] He also conducted a thorough direct and re-direct examinations of petitioner and objected to some of the questions she was asked during her cross- examination.[57] Moreover, he filed a Formal Offer of Evidence for the petitioner and a Motion for Reconsideration of the RTC Order dated 19 November 1997 directing petitioner's arrest and cancellation of her bail bond.[58] He even appealed the RTC Decision convicting petitioner of *estafa* to the Court of Appeals.[59]

Assuming *arguendo* that Atty. Mergas was negligent in failing to inform the Court of Appeals of the alleged compromise between petitioner and Pedro, such cannot be considered as recklessness or gross negligence on his part because, as herein earlier discussed, a compromise agreement does not obliterate the criminal liability of an accused, specially in this case, in which the judgment of conviction has already become final and executory.

We shall now discuss the propriety of the penalties imposed by the RTC on petitioner.

The RTC was correct in awarding moral damages in the amount of ₱10,000.00 because it appears in the record that petitioner acted in evident bad faith and succeeded in defrauding the spouses

---

[55] Records, pp. 77-81.

[56] *Id*.

[57] TSN, 28 July 1997, pp. 1-25 and 25 August 1997, pp. 1-43.

[58] Records, pp. 113 and 138.

[59] CA *rollo*, pp. 26-48.

Sotto.[60] Petitioner introduced herself to the spouses Sotto as an assembler of a jeep when in fact she was not. She even showed to spouses Sotto a gorgeous *Malaguena*-type passenger jeep to convince them that she could really assemble and deliver to them such kind of jeep within a month at the low price of ₱210,000.00. Because of petitioner's false pretenses, the spouses Sotto were induced to make partial payments for the same kind of jeep. Petitioner also failed to show that the jeep was indeed being assembled. When Pedro requested petitioner to show him the jeep, petitioner replied that it was still being assembled in Laguna. But when Pedro asked petitioner to accompany him to Laguna to see the jeep, petitioner refused and even tried to hide. Further, spouses Sotto were forced to hire the services of a lawyer who immediately sent letters to petitioner demanding the return of the money they paid for the jeep. Upon receipt of the said letter, petitioner went to the house of spouses Sotto and promised to return the money, but she failed to do so.[61]

The RTC, however, committed an error in imposing improper prison term on petitioner. Article 315, paragraph 1 of the Revised Penal Code, provides for the penalty in *estafa* cases in which the amount defrauded exceeds ₱22,000.00, as in this case, to wit:

> ART 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> *1st*. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and **if such amount exceeds the latter sum**, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

---

[60] *Naya v. Sps. Abing*, 446 Phil. 484, 495 (2003).

[61] TSN, 20 July 1995, pp. 10-18; 23-26; TSN, 17 August 1995, pp. 48-56.

The penalty prescribed by Article 315 is composed of two, not three periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed, forming one period for each of the three portions.[62] Applying the latter provisions, the maximum, medium and minimum periods of the penalty given are:

Maximum — 6 years, 8 months, 21 days to 8 years
Medium — 5 years, 5 months, 11 days, to 6 years, 8 months, 20 days
Minimum — 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

In the present case, since the amount involved is ₱120,000.00, which exceeds ₱22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.[63]

We now apply the Indeterminate Sentence Law in computing the proper penalty. Since the penalty prescribed by law for the *estafa* charge against petitioner 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 from 6 months and 1 day to **4 years and 2 months**, while the maximum term of the indeterminate sentence should not exceed 20 years of *reclusion temporal*.[64]

In the case at bar, the RTC imposed on petitioner an indeterminate sentence of 4 years, 2 months **and 1 day** of *prision correccional* as the **minimum** penalty to 17 years of *reclusion*

---

[62] *Ceniza-Manantan v. People, supra* note 52 at 382-383; *People v. Gabres*, 335 Phil. 242, 256-257 (1997); *De la Cruz v. Court of Appeals*, 333 Phil. 125, 141 (1996).

[63] *Id*.

[64] *Id*.

temporal as the maximum penalty. The maximum term imposed is correct because of the additional one (1) year for every additional ₱10,000.00 defrauded in excess of ₱22,000.00. However, the minimum term thereof is inaccurate. The inclusion of **1 day** to the minimum term of 4 years and 2 months is improper since the correct duration of *prision correccional* in its minimum to medium periods may be anywhere from 6 months and 1 day to **4 years and 2 months** only.[65]

Be that as it may, we can no longer correct the foregoing penalty, even if it is erroneous, because, as earlier ruled, the judgment of conviction has become final and executory. We have held that the subsequent discovery of an erroneous penalty will not justify correction of the judgment after it has become final.[66]

WHEREFORE, the petition is *DENIED*. The RTC Order dated 19 September 2006 in Criminal Case No. 8611 is hereby *AFFIRMED*.

SO ORDERED.

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

Reyes, J., in the result.

---

[65] *Id*.

[66] *Rafael Reyes Trucking Corporation v. People*, 386 Phil. 41, 61 (2000); *People v. Gatward*, 335 Phil. 440, 460 (1997); *Castillo v. Donato*, G.R. No. 70230, 24 June 1985, 137 SCRA 210, 212.

[*] Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 17 March 2008.

SECOND DIVISION

[G.R. No. 175510. July 28, 2008]

SPOUSES VICTOR VALDEZ and JOCELYN VALDEZ, represented by their Attorney-In-Fact, VIRGILIO VALDEZ, *petitioners, vs.* **SPOUSES FRANCISCO TABISULA and CARIDAD TABISULA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; EASEMENT, DEFINED; STATUTORY BASIS. — An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." The statutory basis of this right is Article 613 of the Civil Code which reads: Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

2. ID.; ID.; ID.; A DOCUMENT STIPULATING A VOLUNTARY EASEMENT MUST BE RECORDED IN THE REGISTRY OF PROPERTY IN ORDER NOT TO PREJUDICE THIRD PARTIES. — [A] document stipulating a voluntary easement must be recorded in the Registry of Property in order not to prejudice third parties. So Articles 708 and 709 of the Civil Code call for, *viz*: Art. 708. The Registry of Property has for its object the inscription or annotation of acts and contracts relating to the ownership and other rights over immovable property. Art. 709. The titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

3. ID.; ID.; ID.; LEGAL EASEMENT OF RIGHT OF WAY; REQUISITES. — [T]o be conferred a legal easement of right of way under Article 649, the following requisites must be complied with: (1) the property is surrounded by other

immovables and has no adequate outlet to a public highway; (2) proper indemnity must be paid; (3) the isolation is not the result of the owner of the dominant estate's own acts; (4) the right of way claimed is at the point least prejudicial to the servient estate; and (5) to the extent consistent with the foregoing rule, the distance from the dominant estate to a public highway may be the shortest. The onus of proving the existence of these prerequisites lies on the owner of the dominant estate, herein petitioners.

4. ID.; DAMAGES; AWARD OF MORAL DAMAGES, PROOF NECESSARY. — To merit an award of moral damages, there must be proof of moral suffering, mental anguish, fright and the like. It is not enough that one suffers sleepless nights, mental anguish, serious anxiety as a result of the actuation of the other party. Invariably, such actuation must be shown by clear and convincing evidence to have been willfully done in bad faith or with ill-motive. In respondents' case, they predicated their Counterclaim for damages on general allegations of sickness, humiliation and embarrassment, without establishing bad faith, fraud or ill-motive on petitioners' part.

5. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COUNTERCLAIM; REFUSAL OR FAILURE TO APPEAR BEFORE THE *LUPON* OR *PANGKAT* SHALL BAR RESPONDENT FROM FILING ANY COUNTERCLAIM; CASE AT BAR. — [R]espondents are precluded from filing any counterclaim in light of Article 199 of Rule XXVI of the *Rules and Regulations Implementing the Local Government Code of 1991* reading: x x x ARTICLE 199. Penalty for Refusal or Failure of Any Party or Witness to Appear before the *Lupon* or *Pangkat*. — Refusal or willful failure of any party or witness to appear before the *lupon* or *pangkat* in compliance with summons issued pursuant to this Rule may be punished by the city or municipal court as for indirect contempt of court upon application filed therewith by the *lupon* chairman, the *pangkat* chairman, or by any of the contending parties. Such refusal or willful failure to appear shall be reflected in the records of the *lupon* secretary or in the minutes of the *pangkat* secretary and shall **bar** the complainant who fails to appear, from seeking judicial recourse for the same course of action, and **the respondent who refuses to appear, from filing any counterclaim** arising out of, or necessarily connected with

the complaint. x x x While respondent Caridad Tabisula claimed that she always appeared, when summoned, before the barangay lupon, the following Certificate to File Action belies the claim. x x x This is to certify that respondents failed to appear for (2) Mediation Proceeding before our *Punong Barangay* thus the corresponding complaint may now be filed in court. Issued this 24th day of November 1998 at the Multi Purpose Hall, Barangay 1 City of San Fernando (LU). x x x

APPEARANCES OF COUNSEL

Edmundo Z. Rimando for petitioners.
Abraham F. Datlag for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner-spouses Victor and Jocelyn Valdez purchased via a January 11, 1993 Deed of Absolute Sale[1] (the deed) from respondent-spouses Francisco Tabisula and Caridad Tabisula a 200 square meter (sq.m.) portion (the subject property) of a 380 sq. m. parcel of land located in San Fernando, La Union, which 380 sq.m. parcel of land is more particularly described in the deed as follows:

A parcel of land classified as residential lot, bounded on the North by Lot No. 25569, on the East, by Lot No. 247, 251, **on the South, by a Creek** and on the West, by Lot No. 223-A, declared under Tax Decl. No. 52820, with an area of 380 square meters, more or less, and assessed at ₱ 17,100.00 for the current year. It is not registered under Act 496 nor under the Spanish Mortgage Law. (Emphasis and underscoring supplied)

The pertinent portions of the deed read:

x x x x x x x x x

That for and in consideration of the sum of SEVENTY THOUSAND (₱70,000.00) PESOS, Philippine Currencyp [*sic*] paid to us at our

[1] Exhibit "C", Folder of Exhibits.

entire satisfaction by spouses VICTOR and JOECELYN [*sic*] VALDEZ, both of legal age, Filipinos and residents of 148 P. Burgos St., San Fernando, La Union, receipt of which is hereby acknowledged, do hereby SELL, CONVEY and TRANSFER by way of absolute sale unto the said spouses Victor and Joecelyn Valdez, their heirs and assigns, the **TWO HUNDRED (200) SQUARE METERS, EASTERN PORTION** of the parcel of land above-described, free from all liens and encumbrances.

x x x x x x x x x

That now and hereinafter, said VENDEE-SPOUSES VICTOR and JOECELYN [*sic*] VALDEZ shall be the absolute owners of the said 200 sq. meters, eastern portion and that we shall warrant and forever defend their ownership of the same against the claims of all persons whomsoever; **they shall be provided a 2 1/2 meters [*sic*] wide road right-of-way on the western side** of their lot but which is not included in this sale.

x x x x x x x x x.

(Emphasis and underscoring supplied)

Respondents subsequently built a concrete wall on the western side of the subject property.[2] Believing that that side is the intended road right of way mentioned in the deed, petitioners, through their representative, reported the matter to the *barangay* for mediation and conciliation. Respondents failed to attend the conferences scheduled by the *barangay*, however, drawing petitioners to file in April 1999 or more than six years after the execution of the deed a Complaint for Specific Performance with Damages[3] against respondents before the Regional Trial Court (RTC) of San Fernando City, La Union.

In their complaint, petitioners alleged that they purchased the subject property on the strength of respondents' assurance of providing them a road right of way. They thus prayed that respondents be ordered to provide the subject property with a 2½-meter wide easement and to remove the concrete wall blocking the same.[4]

---

[2] Records, p. 2.

[3] Filed on April 13, 1999.

[4] Records, p. 3.

Respondents, in their Answer with Compulsory Counterclaim (for damages and attorney's fees),[5] averred that the 2 ½-meter easement should be taken from the western portion of the subject property and not from theirs;[6] and petitioners and their family are also the owners of two properties adjoining the subject property, which adjoining properties have access to two public roads or highways — the bigger one which adjoins P. Burgos St. on the north, and the smaller one which abuts an existing *barangay* road on the north.[7]

Respondents further averred that they could not have agreed to providing petitioners an easement "on the western side of their lot" as there exists a two-storey concrete house on their lot where the supposed easement is to be located, which was erected long before the subject property was sold to petitioners.[8] In support of this claim, respondents submitted a February 20, 2003 letter from the City Engineer's Office.[9]

Branch 26 of the RTC of San Fernando dismissed petitioners' complaint and granted respondents' Counterclaim by Decision[10] of March 18, 2005, the dispositive portion of which reads:

> WHEREFORE, and in view of all the foregoing, judgment is hereby rendered finding the defendants as against the plaintiffs and hereby orders the Complaint dismissed for being unmeritorious and plaintiffs are hereby ordered to pay the defendants, the following:
>
> 1) ₱100,000.00 as moral damages;
>
> 2) ₱50,000.00 as exemplary damages;
>
> 3) ₱50,000.00 as attorney's fees;
>
> 4) ₱30,000.00 as expenses of litigation; and

---

[5] *Id*. at 25-30.

[6] *Id*. at 26.

[7] *Id*. at 27.

[8] *Ibid.*

[9] *Id*. at 155, Exhibit "3".

[10] *Rollo*, pp. 23-31.

5) To pay the costs.

SO ORDERED.[11] (Underscoring supplied)

On appeal by petitioners, the Court of Appeals, by Decision of May 29, 2006,[12] affirmed that of the trial court, it holding that the deed only conveyed ownership of the subject property to petitioners, and that the reference therein to an easement in favor of petitioners is not a definite grant-basis of a voluntary easement of right of way.[13]

The appellate court went on to hold that petitioners are neither entitled to a legal or compulsory easement of right of way as they failed to present circumstances justifying their entitlement to it under Article 649 of the Civil Code.[14]

Petitioners' motion for reconsideration[15] having been denied by the Court of Appeals by Resolution of November 15, 2006, they filed the present petition for review on *certiorari* faulting the trial [*sic*] court

I. . . . IN RULING THAT THE RIGHT OF WAY IS NOT PART OF THE ABSOLUTE DEED OF SALE DATED JANUARY 11, 1993;

II. . . . IN RULING THAT THE PROVISION OF THE ABSOLUTE DEED OF SALE GRANTING A RIGHT OF WAY IS VAGUE AND OBSCURE;

III. . . . IN AWARDING MORAL AND EXEMPLARY DAMAGES TO THE RESPONDENTS.[16] (Underscoring supplied)

An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody

---

[11] Page 9 of RTC decision; *rollo*, p. 31.

[12] Penned by Justice Magdangal M. de Leon with the concurrence of Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo.

[13] *Id*. at 37.

[14] *Id*. at 39.

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

[16] *Id*. at 6.

else to do something on his property for the benefit of another thing or person."[17] The statutory basis of this right is Article 613 of the Civil Code which reads:

> Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.
>
> The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

There are two kinds of easements according to source — by law or by the will of the owners. So Article 619 of the Civil Code provides:

> Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

From the allegations in petitioners' complaint, it is clear that what they seek to enforce is an alleged grant in the deed by respondents of an easement reading: *"they shall be provided a 2 ½ meters wide road right-of-way on the western side of their lot but which is not included in this sale."*

Article 1358 of the Civil Code provides that any transaction involving the sale or disposition of real property must be in writing.[18] The stipulation harped upon by petitioners that they "shall be provided a 2½ meters wide road right-of-way on the western side of their lot but which is not included in this sale" is not a

---

[17] 3 Sanchez Roman 572.

[18] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or an interest therein are governed by Articles 1403, No. 2 and 1405;

(2) x x x

(3) x x x

(4) x x x

x x x x x x x x x

disposition of real property. The proviso that the intended grant of right of way is "not included in this sale" could only mean that the parties would have to enter into a separate and distinct agreement for the purpose.[19] The use of the word "shall," which is imperative or mandatory in its ordinary signification, should be construed as merely permissive where, as in the case at bar, no public benefit or private right requires it to be given an imperative meaning.[20]

Besides, a document stipulating a voluntary easement must be recorded in the Registry of Property in order not to prejudice third parties. So Articles 708 and 709 of the Civil Code call for, *viz*:

> Art. 708. The Registry of Property has for its object the inscription or annotation of acts and contracts relating to the ownership and other rights over immovable property.
>
> Art. 709. The titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

Petitioners are neither entitled to a legal or compulsory easement of right of way. For to be entitled to such kind of easement, the preconditions under Articles 649 and 650 of the Civil Code must be established, *viz*:

> Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons, and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.
>
> x x x x x x x x x
>
> This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts. (Underscoring supplied)
>
> Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as

---

[19] *Dionisio, et al. v. Ortiz, et al.*, G.R. No. 95738, December 10, 1991, 204 SCRA 745, 749.

[20] *Diokno v. Rehabilitation Finance Corp.*, 91 Phil. 608 citing *Sheldon v. Sheldon*, 134 A. 904, 905, 100 N.J. Ex. 24.

consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. (Underscoring supplied)

Thus, to be conferred a legal easement of right of way under Article 649, the following requisites must be complied with: (1) the property is surrounded by other immovables and has no adequate outlet to a public highway; (2) proper indemnity must be paid; (3) the isolation is not the result of the owner of the dominant estate's own acts; (4) the right of way claimed is at the point least prejudicial to the servient estate; and (5) to the extent consistent with the foregoing rule, the distance from the dominant estate to a public highway may be the shortest.[21] The onus of proving the existence of these prerequisites lies on the owner of the dominant estate,[22] herein petitioners.

As found, however, by the trial court, which is supported by the Sketch[23] (Exhibit "B"; Exhibit "1") of the location of the lots of the parties and those adjoining them, a common evidence of the parties, petitioners and their family are also the owners of two properties adjoining the subject property which have access to two public roads or highways.[24]

Since petitioners then have more than adequate passage to two public roads, they have no right to demand the grant by respondents of an easement on the "western side of [respondents'] lot."

It may not be amiss to note at this juncture that at the time the deed was executed in 1993, the *barangay* road-Exhibit "1-G", by which petitioners could access Burgos Street-Exhibit "1-F", was not yet in existence; and that the Interior Street-Exhibit "1-H", which petitioners via this case seek access to with a

---

[21] *Francisco v. Intermediate Appellate Court*, G.R. No. 63996, September 15, 1989; *De la Cruz v. Ramiscal*, G.R. No. 137882, February 4, 2005, 450 SCRA 449, 450 citing *Villanueva v. Velasco*, G.R. No. 130845, November 27, 2000.

[22] *Costabella Corp. v. Court of Appeals*, G.R. No. 80511, January 25, 1991, 193 SCRA 333, 334.

[23] Records, p. 80.

[24] Exhibit "1" for respondents, Exhibit "F" for petitioners; records, p. 80.

right of way, was still a **creek**,[25] as reflected in the earlier-quoted particular description of respondents' parcel of land from which the subject property originally formed part.

Respecting the grant of damages in favor of respondents by the trial court which was affirmed by the appellate court, the Court finds the same baseless.

To merit an award of moral damages, there must be proof of moral suffering, mental anguish, fright and the like. It is not enough that one suffers sleepless nights, mental anguish, serious anxiety as a result of the actuation of the other party.[26] Invariably, such actuation must be shown by clear and convincing evidence[27] to have been willfully done in bad faith or with ill-motive.

In respondents' case, they predicated their Counterclaim for damages on general allegations of sickness, humiliation and embarrassment, without establishing bad faith, fraud or ill-motive on petitioners' part.[28]

More importantly, respondents are precluded from filing any counterclaim in light of Article 199 of Rule XXVI of the *Rules and Regulations Implementing the Local Government Code of 1991* reading:

x x x x x x x x x

ARTICLE 199. Penalty for Refusal or Failure of Any Party or Witness to Appear before the *Lupon* or *Pangkat*. — Refusal or willful failure of any party or witness to appear before the *lupon* or *pangkat* in compliance with summons issued pursuant to this Rule may be punished by the city or municipal court as for indirect contempt of court upon application filed therewith by the *lupon* chairman, the *pangkat* chairman, or by any of the contending parties. Such refusal or willful failure to appear shall be reflected in the records of the *lupon* secretary or in the minutes of the *pangkat* secretary and shall

---

[25] *Vide* TSN, June 29, 2004, p. 14.

[26] *Francisco v. GSIS*, G.R. No. L-18155, March 30, 1939.

[27] *Audion Electric Co. v. NLRC*, G.R. No. 106648, June 17, 1999.

[28] TSN, June 29, 2004 at p. 11, direct examination of Caridad Tabisula.

bar the complainant who fails to appear, from seeking judicial recourse for the same course of action, and **the respondent who refuses to appear, from filing any counterclaim** arising out of, or necessarily connected with the complaint.

x x x x x x x x x

(Emphasis and underscoring supplied)

While respondent Caridad Tabisula claimed that she always appeared, when summoned, before the *barangay lupon*,[29] the following Certificate to File Action[30] belies the claim.

x x x x x x x x x

This is to certify that respondents failed to appear for (2) Mediation Proceeding before our *Punong Barangay* thus the corresponding complaint may now be filed in court.

Issued this 24th day of November 1998 at the Multi Purpose Hall, Barangay 1 City of San Fernando (LU).

x x x x x x x x x

(Underscoring supplied)

The award for moral damages being thus baseless, that for exemplary damages must too be baseless.

As for the award of attorney's fees and expenses of litigation, respondents have not shown their entitlement thereto in accordance with Article 2208 of the Civil Code.

WHEREFORE, the May 29, 2006 Decision and November 15, 2006 Resolution of the Court of Appeals are *MODIFIED* in that the grant of the Counterclaim of respondents, Spouses Francisco Tabisula and Caridad Tabisula, is reversed and set aside. In all other respects, the challenged decision is *AFFIRMED.*

Costs against petitioners.

SO ORDERED.

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

[29] TSN, June 29, 2004, p.16, cross-examination of Caridad Tabisula.

[30] Exhibit "E".

SECOND DIVISION

[G.R. No. 175589. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CERILLO TAMBIS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; TREACHERY; MAY STILL BE APPRECIATED EVEN THOUGH THE VICTIM WAS FOREWARNED OF THE DANGER TO HIS PERSON IF THE EXECUTION OF THE ATTACK MADE IT IMPOSSIBLE FOR HIM TO DEFEND HIMSELF OR TO RETALIATE. — [T]he Court of Appeals committed no reversible error in appreciating the qualifying circumstance of treachery. x x x Treachery may still be appreciated even though the victim was forewarned of the danger to his person. In other words, even when the victim is warned of the danger, if the execution of the attack made it impossible for him to defend himself or to retaliate, *alevosia* can still be appreciated. Appellant's sudden attack deprived the victim of an opportunity to defend himself. His utterance — "*walang kikilos*" — cannot be construed as warning to the victim to defend himself. It indicates a caveat to restrain anyone from coming to the victim's defense.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WHOLE CASE IS OPEN FOR REVIEW IN ALL ASPECTS, INCLUDING THOSE NOT RAISED BY THE PARTIES; A MODIFICATION OF THE DECISION RESPECTING THE CIVIL ASPECT OF THE CASE IS IN ORDER. — As it is well-established that an appeal in criminal proceedings throws the whole case open for review of all aspects, including those not raised by the parties, the Court, after combing through the documentary evidence for the prosecution, finds that a modification of the decision respecting the civil aspect of the case is in order.

3. CIVIL LAW; DAMAGES; COMPENSATORY DAMAGES; COMPENSATION FOR LOSS OF EARNING CAPACITY, FORMULA. — Jurisprudence, however, has established the

following formula for computing compensation for loss of earning capacity: net earning capacity = [2/3 x (80-age at time of death) x (gross annual income – reasonable and necessary living expenses], and pegged reasonable and necessary reasonable expenses at 50% of earnings in the absence of contrary evidence. Applying this formula, this Court arrives at ₱1,269,047.30 as compensatory damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Cerilo Tambis (appellant) was charged before the Regional Trial Court (RTC) of Quezon City with Murder in an Information reading:

x x x x x x x x x

That on or about the 12th day of June 1998 in Quezon City[,] Philippines, the above-named accused, with intent to kill, with treachery and evident premeditation did then and there willfully, unlawfully, and feloniously attack, assault, and employ personal violence upon the person of one GAUDIOSO MORAL JR. by then and there stabbing him on the left portion of his body thereby causing upon him [a] serious and grave wound which was the direct and immediate cause of his death to the damage and prejudice of the heirs of GAUDIOSO MORAL JR.[1]

x x x x x x x x x

Through the testimony of Luzviminda Moral (Luzviminda), the widow of Gaudioso Moral, Jr. (the victim), the prosecution established the following:[2]

---

[1] Records, p. 1.

[2] TSN, September 17, 1998, pp. 2-12; TSN, September 24, 1998, pp. 2-18; TSN, April 13, 1999, pp. 3-4.

At around 10:00 o'clock in the evening of June 12, 1998, as Luzviminda was at her neighbor's house to fetch her husband-the victim who was drinking with a group, appellant arrived. Appellant suddenly stabbed the victim on the left abdomen and attempted to stab him a second time but Luzviminda pushed appellant away as the victim repaired to hide inside the neighbor's house. The victim died of the stab wound at a hospital the following day.[3]

Upon the other hand, appellant, admitting that he stabbed the victim, claimed self-defense, averring that when the victim saw him, the latter got mad and attacked him with a knife to thus draw him to grab the knife with which he stabbed the victim.[4]

Branch 219 of the Quezon City RTC credited the claim of the prosecution.[5] It rejected appellant's claim of self-defense. And it held that while the killing was not attended by evident premeditation, it was attended by treachery, thus:

> x x x In this case, the victim was drinking with his buddies, unarmed, and in no position to defend himself when the accused suddenly appeared and stabbed him. Although, as testified to by the victim's wife, the accused had warned the group "Walang kikilos!" x x x which should have alerted the victim or put him on guard, the suddenness [of] his attack against Gaudioso Moral, who was unarmed, demonstrated that the accused deliberately employed a method of attack which ensured the execution of his felonious design without risk to himself arising from any defense which his victim might make.[6] (Underscoring supplied)

The trial court thus convicted appellant of Murder, by Decision of June 17, 1999, disposing as follows:

> WHEREFORE, finding the accused Cerilo Tambis *y* Ollana guilty beyond reasonable doubt of the crime of Murder, the Court hereby sentences him to suffer the penalty of *[r]eclusion [p]erpetua*; to

---

[3] Exhibits "M"- "O", records, pp. 58-60. *Vide* records, pp. 64-68.

[4] TSN, February 1, 1999, pp. 2-5.

[5] Records, pp. 82-87.

[6] *Id*. at 86-87.

pay the heirs of Gaudioso Moral the amount of ₱26,034.93 as actual damages; the amount of ₱30,000.00 as moral damages; the amount of ₱1,640,034.50 as compensatory damages for the loss of the victim's earning capacity, and ₱75,000.00 as indemnity for his death, and to pay the costs.

SO ORDERED.[7]

Appellant lodged before this Court an appeal which it forwarded to the Court of Appeals following *People v. Mateo*[8] which directs the intermediate review of decisions imposing the penalty of death, *reclusion perpetua*, or life imprisonment.[9]

In his Brief, appellant assigned as lone error the trial court's "finding that the qualifying circumstance of treachery attended the commission of the crime,"[10] he contending that by saying "*Walang kikilos*!," he actually warned appellant of the impending attack;[11] and that even if the attack was sudden and the victim was in a vulnerable position, they were not deliberately sought.[12]

The Solicitor General countered:

[T]here is **no discernible relation** between appellant's utterance ("walang kikilos") and his supposed lack of a conscious design to adopt a treacherous mode of attack that would negate treachery.

For *alevosia* to be considered as a qualifying circumstance, two conditions need to be satisfied: (a) the employment of means, manner or method of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or retaliate; and (b) the means, method, or manner of execution were deliberately or consciously adopted by the offender. . . . The essence of treachery is that the attack comes without warning and in a swift, deliberate

---

[7] *Id*. at 87.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[9] CA *rollo*, p. 79.

[10] *Id*. at 40.

[11] *Id*. at 41.

[12] *Id*. at 42-43.

and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. . . . Such treacherous manner is patent in appellant's chosen mode of attack on the victim.

That appellant **consciously** adopted his treacherous mode of attack is indicated by the fact that he proceeded to the place where the victim was drinking carrying a knife. There is no showing that appellant went to the said place or was carrying the knife **for some other purpose**. Neither is their any showing that he merely chanced upon the victim who was caught off-guard nor there was provocation on the part of the victim.

x x x x x x x x x

Appellant's utterance prior to the attack cannot be considered a warning that would negate treachery. For a warning to negate treachery, such must give the intended victim the opportunity to defend himself. Since appellant's utterance [was] made **immediately** prior to the attack, such cannot constitute adequate warning that would have given the victim the chance to escape or parry the blow. Effectively, the utterance was **inconsequential** to the progress of the attack for even with such utterance, the victim still was not able to defend himself. [13] (Emphasis in the original, underscoring supplied (citations omitted)

By Decision of July 27, 2006, the Court of Appeals affirmed[14] the trial court's decision. Appellant thereupon brought the case to this Court.[15]

In separate manifestations, appellant and the Solicitor General informed that they would no longer file supplemental briefs, their respective positions having been adequately discussed in the Briefs they had earlier filed which had been passed upon by the Court of Appeals.[16]

---

[13] *Id.* at 68-70.

[14] Penned by Court of Appeals Associate Justice Jose C. Reyes, Jr., with the concurrences of Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas, *id.* at 81-91.

[15] *Id.* at 94-95.

[16] *Rollo,* pp. 15-21. *Vide* CA *rollo,* pp. 32-44, 62-72.

From a review of the records of the case, this Court finds that, contrary to appellant's argument, the Court of Appeals committed no reversible error in appreciating the qualifying circumstance of treachery.

> x x x Treachery may still be appreciated even though the victim was forewarned of the danger to his person. In other words, even when the victim is warned of the danger, if the execution of the attack made it impossible for him to defend himself or to retaliate, *alevosia* can still be appreciated. (Underscoring supplied)[17]

Appellant's sudden attack deprived the victim of an opportunity to defend himself. His utterance — "*walang kikilos*" — cannot be construed as warning to the victim to defend himself. It indicates a caveat to restrain anyone from coming to the victim's defense.

Appellant's appeal thus fails.

As it is well-established that an appeal in criminal proceedings throws the whole case open for review of all aspects, including those not raised by the parties,[18] the Court, after combing through the documentary evidence for the prosecution, finds that a modification of the decision respecting the civil aspect of the case is in order.

The trial court awarded ₱26,034.93 as actual damages representing expenses for the hospitalization, wake, and funeral of the victim.[19] A recomputation of the amounts reflected in the documentary evidence (Exhibits "G", "G-1" to "G-18", "H", "H-1", "I", and "I-1"[20]) — basis of the award yields, however, a total of ₱26,300.45.

As for the award of ₱1,640,034.50 representing compensatory damages, the trial court arrived at it in this wise:

---

[17] *People v. Gutierrez*, 429 Phil. 124, 137 (2002).

[18] *People v. Artellero*, 395 Phil. 876, 889 (2000).

[19] Records, p. 87. *Vide* Exhibits "G"- "I" and submarkings, records, pp. 30-37; TSN, September 24, 1998, pp. 2-6.

[20] *Ibid*. *Vide* Exhibits "G"-"I" and submarkings, records, pp. 30-37; TSN, September 24, 1998, pp. 2-6.

x x x The [amount] was computed taking into account the following: a) his age at the time of his demise — 41 years old; b) his life expectancy – 65 years; c) his monthly salary of ₱7,624.70 [as driver of Egon Trade, Inc.] [21] plus 13th month pay of ₱6,214.70; and d) his gross earnings for 24 years — ₱2,342,906.4.

Deducting thirty percent 30% therefrom as his living expenses (702,817.92), the actual damages to be paid by the accused should, therefore, be ₱1,640,034.50. In considering the thirty percent rate, the Court took into account the fact that he was the sole bread winner of the family and he had three minor children.[22]

Jurisprudence, however, has established the following formula for computing compensation for loss of earning capacity:

net earning capacity = [2/3 x (80-age at time of death) x (gross annual income – reasonable and necessary living expenses],[23]

and pegged reasonable and necessary reasonable expenses at 50% of earnings in the absence of contrary evidence.[24] Applying this formula, this Court arrives at ₱1,269,047.30 as compensatory damages.

WHEREFORE, the July 27, 2006 Decision of the Court of Appeals affirming that of Branch 219 of the Quezon City Regional Trial Court is *MODIFIED* in that the award of actual damages for the hospitalization, wake, and funeral expenses is *INCREASED* to ₱26,300.45, and the award of compensatory damages for loss of earning capacity is *REDUCED* to ₱1,269,047.30. In all other respects, the challenged Decision is *AFFIRMED*.

SO ORDERED.

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

---

[21] Exh. "J" (Certificate of Employment and Compensation), records, p. 38.

[22] Records, p. 87. Citations omitted. *Vide* Exhibits "J" and "O", records pp. 38 and 60.

[23] *People v. Catbagan,* 467 Phil. 1044, 1087 (2004).

[24] *Ibid*.

SECOND DIVISION

[G.R. No. 176448. July 28, 2008]

JOSE S. DAILISAN, *petitioner, vs.* **COURT OF APPEALS and THE HRS. OF THE "late" FEDERICO PUGAO, namely: FLORENTINA PUGAO, FLORIDA PUGAO-UBALDO, FE PUGAO-VILLANUEVA, FERNANDO PUGAO and LUDOVICO PUGAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; NOTARIZED DEED OF ABSOLUTE SALE IS A PUBLIC DOCUMENT WHICH HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY; BURDEN OF PROOF TO OVERCOME THE PRESUMPTION OF ITS DUE EXECUTION LIES ON THE PARTY CONTESTING SUCH EXECUTION. — The notarized deed of absolute sale is a public document, and has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting such execution.

2. CIVIL LAW; CONTRACTS; VOID AND VOIDABLE CONTRACTS, DISTINGUISHED. — A contract is inexistent and void from the very beginning when (i) its cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (ii) it is absolutely simulated or fictitious; (iii) its cause or object did not exist at the time of the transaction; (iv) its object is outside the commerce of men; (v) it contemplates an impossible service; (vi) the intention of the parties relative to the principal object of the contract cannot be ascertained; or (vii) it is expressly prohibited or declared void by law. The action or defense for the declaration of the inexistence of a contract does not prescribe. On the other hand, a voidable or annullable contract is one where (i) one of the parties is incapable of giving consent to a contract; or (ii) the consent is vitiated by mistake, violence, intimidation, undue influence or fraud. The action for annulment must be brought

within four (4) years from the time the intimidation, violence or undue influence ceases, or four (4) years from the time of the discovery of the mistake or fraud.

3. ID.; PROPERTY; CO-OWNERSHIP; EXISTS WHEN OWNERSHIP OF AN UNDIVIDED THING OR RIGHT BELONGS TO DIFFERENT PERSONS; NATURE. — The regime of co-ownership exists when ownership of an undivided thing or right belongs to different persons. By the nature of a co-ownership, a co-owner cannot point to a specific portion of the property owned in common as his own because his share therein remains intangible.

4. ID.; ID.; ID.; A CO-OWNER HAS RIGHT TO DEMAND PARTITION, A RIGHT WHICH DOES NOT PRESCRIBE; CASE AT BAR. — The description "undivided ONE-FOURTH (1/4) portion (50 square meters, more or less, in the particular portion of the lot where the house of the VENDEE now stands)" shows that the portion sold is still undivided and not sufficiently identified. While the description provides a guide for identifying the location of the lot sold, there was no indication of its exact metes and bounds. This is the reason why petitioner was constrained to cause the survey of the property. As a co-owner of the property, therefore, petitioner has the right to demand partition, a right which does not prescribe.

5. ID.; SALES; DELIVERY OF THE THING SOLD; EXECUTION OF A SALE MADE THROUGH A PUBLIC INSTRUMENT IS EQUIVALENT TO DELIVERY OF THE THING. — Ownership of the thing sold is acquired only from the time of delivery thereof, either actual or constructive. Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be inferred. The Court notes that Federico had already delivered the portion he sold to petitioner, subject of course to the execution of a technical survey, when he executed the deed of absolute sale, which is a public instrument. In view of the delivery in law, coupled with petitioner's actual occupation of the portion where his house stands, all that is needed is its segregation from the rest of the property.

APPEARANCES OF COUNSEL

Leonard U. Sawal for petitioner.
Mallari & Mallari Law Office for private respondents.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review[1] of the 25 May 2006 Decision[2] and 26 January 2007 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82642,[4] which reversed and set aside the Decision[5] of the Regional Trial Court (RTC) of Quezon City, Branch 88, dated 3 September 2003.

On 8 July 1993, petitioner filed a Complaint[6] for partition before the RTC of Quezon City,[7] alleging that he purchased one-fourth (¼) of the land of Federico Pugao (Federico) identified as Lot 16, Block NB 22 of subdivision Psd-57020 located in Bago Bantay, Quezon City and covered by Transfer Certificate of Title No. No. 75133.

According to petitioner, he and Federico had initially agreed to the sale of one-half (½) portion of the same land for ₱12,000.00 and that he had paid Federico several installments from 1976 to 1979, which all in all totaled to ₱6,000.00, but was told to stop further payments because per Federico's representation

---

[1] *Rollo*, pp. 3-26.

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

[3] *Id*. at 39.

[4] *Jose S. Dailisan v. Federico Pugao, and all Persons claiming rights and Interest over Transfer Certificate of Title No. 36130*; penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Jose C. Reyes and Arturo G. Tayag, concurring.

[5] *Rollo*, pp. 86-89.

[6] *Id*. at 40-44.

[7] The case was thereafter raffled to Branch 98.

he could only sell one-fourth (¼) of the lot.[8] Federico could not deliver the title to him because the property was still mortgaged to a bank. When the mortgage was released, petitioner demanded the execution of a deed of absolute sale. Instead of acceding, Federico proposed to mortgage the property to petitioner as security for a ₱10,000.00 loan, payable in three (3) months, and upon payment of the loan the deed of absolute sale would be executed. Petitioner agreed, and they executed a deed of real estate mortgage.[9] The loan was paid after three (3) months, after which petitioner and Federico executed a deed of absolute sale on 5 February 1979. Petitioner asked for the partition of the lot and caused a resurvey to expedite the partition.[10] However, Federico still refused to effect the partition and even sent a notice of eviction[11] against petitioner.

According to Federico, petitioner is the husband of his niece and that when the couple's house was demolished during martial law, he allowed them out of pity to occupy one fourth (¼) of his lot. While averring that the property had been the subject of real estate mortgages in favor of other banks, he admitted that he executed in favor of petitioner a deed of real estate mortgage as security for a ₱10,000.00 loan. He was able to pay the said loan which resulted in the cancellation of the mortgage, he added.[12]

However, Federico denied having voluntarily executed the deed of absolute sale, and instead alleged that when he was seriously ill in January of 1992, petitioner, with a certain Atty. Juanitas, made him sign pages of what the former told him to be parts of the real estate mortgage he had earlier executed in favor of petitioner. Federico filed a complaint for falsification and ejectment against petitioner before the *barangay*, but attempts

---

[8] TSN, 15 October 1998, p. 5.

[9] Deed of Real Estate Mortgage, Records, pp. 54-55.

[10] Exhibit "E", Folder of Exhibits.

[11] Letter dated 3 May 1993, Exhibit "C", Folder of Exhibits.

[12] *Rollo,* pp. 57-72, Answer with Counterclaim.

at conciliation failed. Due to his failing health, Federico failed to carry out his intention to file and pursue a formal complaint before the court.[13]

Federico passed away while this case was pending before the trial court.[14] And so he was substituted by his heirs, herein respondents [15]

On 3 September 2003, the trial court, finding that respondents failed to disprove the validity of the deed of absolute sale, ruled in favor of petitioner and ordered the partition of the subject property.[16] The dispositive portion of the decision reads:

> IN VIEW OF THE FOREGOING, judgment is rendered as follows:
>
> 1. Ordering the partition of the said parcel of land mentioned and described in paragraph 3 of the complaint, adopting for the purpose of said partition, the survey plan prepared by the Geodetic Engineer;
>
> 2. Ordering the defendant to surrender and execute all the necessary documents to effect the partition and issuance of separate Transfer Certificate of Title over the subject matter of the Deed of Absolute Sale;
>
> 3. Ordering the defendants to pay the amount of fifty thousand pesos (₱50,000.00) as moral and exemplary damages;
>
> 4. Ordering the defendant to pay attorney's fees in the amount of ₱30,000.00 and ₱500.00 per appearance, plus costs;
>
> 5. Ordering the Register of Deeds of Quezon City to issue a Transfer Certificate of Title to effect the partition in the name of plaintiff.
>
> SO ORDERED.[17]

---

[13] *Id*.

[14] Records, p. 186; Death Certificate of Federico L. Pugao.

[15] *Id*. at 189.

[16] *Rollo*, pp. 86-89.

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

Respondents moved for the reconsideration of the decision but their motion was denied by the trial court on 19 January 2004.[18] Hence, they appealed the decision to the Court of Appeals.

The Court of Appeals granted the appeal. It noted that petitioner should have filed an action for specific performance to compel Federico to honor the deed of absolute sale;[19] yet the right to file such action, had already expired.[20] It further noted that petitioner "filed the instant action for partition simply because it is not barred by prescription."[21] It ruled against the validity of the sale between Federico and petitioner, finding that there was no consent on Federico's part and that there was no proof of payment of the price or consideration on the part of petitioner.[22] It concluded that the deed of sale is fictitious and invalid, and hence could not serve as basis of any claim of ownership.[23]

Petitioner filed a motion for reconsideration but his motion was denied for lack of merit.[24]

Petitioner now claims that the appellate court's decision is contrary to law. He argues that his action is "actually a case of 'specific performance' for the delivery/surrender of title in view of the duly executed 'Deed of Absolute Sale,' and thus, the validity of the said deed cannot be collaterally attacked, but must be raised in an independent action."[25] He insists that his action for specific performance has not prescribed because upon the execution of the deed of sale, ownership of the subject

---

[18] *Id*. at 90.

[19] *Id*. at 33.

[20] Art. 1144 of the Civil Code provides that actions upon a written contract must be brought within ten years.

[21] *Rollo*, p. 33.

[22] *Id*. at 34.

[23] *Id*. at 36.

[24] *Id*. at 39; Resolution dated 26 January 2007.

[25] *Id*. at 11.

property has passed to him, the buyer, and an action for specific performance is only incidental to his claim of ownership; on the contrary, it is respondents' right (duty)[26] to question the validity of the deed of sale, which they did not do despite knowledge of the existence of the said instrument as early as 1984. Finally, he questions the specific findings of the Court of Appeals concerning the execution of the deed of absolute sale as not borne by the evidence.[27]

For their part, respondents point out that this is the first time that petitioner alleged that his action for partition is actually a case of specific performance for the delivery/surrender of the title of the subject property. This being so, respondents believe that petitioner's cause of action has already prescribed since more than ten (10) years have already lapsed since the execution of the deed of sale. They add that in any case, petitioner's arguments and allegations are untrue, baseless and misleading.[28]

We resolve to grant the petition.

The two determinative issues in this case are: (1) whether the deed of absolute sale is valid; and (2) what is the prescriptive period within which to file petitioner's action.

The notarized deed of absolute sale is a public document, and has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate.[29] The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting such execution.

First, a distinction must be made between void and voidable contracts. A contract is inexistent and void from the very beginning

---

[26] Word in parenthesis supplied.

[27] *Rollo,* p. 12.

[28] *Id.* at 149-162.

[29] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, 10 February 2006, 482 SCRA, 164, 174.

when (i) its cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (ii) it is absolutely simulated or fictitious; (iii) its cause or object did not exist at the time of the transaction; (iv) its object is outside the commerce of men; (v) it contemplates an impossible service; (vi) the intention of the parties relative to the principal object of the contract cannot be ascertained; or (vii) it is expressly prohibited or declared void by law.[30] The action or defense for the declaration of the inexistence of a contract does not prescribe.[31] On the other hand, a voidable or annullable contract is one where (i) one of the parties is incapable of giving consent to a contract; or (ii) the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.[32] The action for annulment must be brought within four (4) years from the time the intimidation, violence or undue influence ceases, or four (4) years from the time of the discovery of the mistake or fraud.[33]

Respondents claim that the deed of sale "is not valid because there was absolutely no consent on the part of" Federico "to said contract, which was in English," considering that Federico "did not even finish Grade 2 of the elementary school level,"[34] and that he was only led to believe that the pages thereof corresponded to and were part of the real estate mortgage. Basically, respondents' claim is that the deed of sale is a voidable, and not void, contract and the ground to be raised is mistake and/or fraud because Federico was led to believe that what he was signing was still part of the earlier deed of real estate mortgage. In that regard, respondents stress Federico's low educational attainment and inability to understand the English language.

Nevertheless, Florida Pugao, one of the respondents, testified that she became aware of the existence of the deed of sale way

---

[30] CIVIL CODE, Art. 1409.

[31] CIVIL CODE, Art. 1410.

[32] CIVIL CODE, Art. 1390.

[33] CIVIL CODE, Art. 1391.

[34] *Rollo*, p. 65.

back in 1984.[35] Despite this knowledge, as well as Federico's and/or his other heirs' knowledge of the assailed deed even prior to 1984, none of them took any action to annul the deed within the prescribed four (4)-year period which expired in 1988.

Anent Federico's low educational attainment and unfamiliarity with English, Article 1332 of the Civil Code is the governing provision:

> Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

That Federico did not even reach Grade 2, that he was unable to read or understand English, and that his consent was vitiated by mistake or fraud, make the situation fall under the above-quoted provision. Thus, it would have been incumbent upon petitioner to show that he fully explained the terms of the contract to Federico if not for a crucial point. Respondents failed to file an action for annulment of the deed of sale on the ground of mistake or fraud within the four-year period provided by law. Thus, they have lost both their right to file an action for annulment or to set up such nullity of the deed of sale as a defense in an action to enforce the same,[36] which was the case filed by petitioner. Likewise, respondents failed to assign the matter of mistake or fraud as an error before the Court of Appeals.

Anent the "inconsistencies" in the deed of sale, suffice it to say that they are really not inconsistencies but rather trivial flaws appearing in the acknowledgment, and not in the body of the deed itself which contains the operative provisions. Moreover, there is no allegation that the signatures appearing in the deed were forged or falsified.

All told, respondents were unable to overcome the presumption of validity of the deed of absolute sale as well as the regularity in its execution.

---

[35] TSN, 6 October 2000, pp. 21-28.

[36] *Caram, Jr. v. Laureta*, No. L-28740, 24 February 1981, 103 SCRA 7, 17.

With the issue of the deed of sale's validity already settled, the question of prescription of action becomes easy to resolve. We note that the Court of Appeals ruled that petitioner's cause of action has prescribed following its conclusion that petitioner's action is actually one for specific performance, not partition. Interestingly, petitioner, after having triumphed in the trial court with his action for partition, suddenly changed tack and declared that his original action was indeed an action for specific performance. He should not have gone that far and executed an apparent somersault. In light of the facts which impelled petitioner to seek judicial relief, there is no discernible change in the ultimate relief he seeks, as his complaint for partition is also an action for specific performance. His objective is to make Federico honor their contract and perform his obligation to deliver a separate title covering the lot he sold to him but which can be done only after the portion is segregated from the rest of Federico's property.[37]

Petitioner's action before the trial court was properly captioned as one for partition because there are sufficient allegations in the complaint that he is a co-owner of the property. The regime of co-ownership exists when ownership of an undivided thing or right belongs to different persons.[38] By the nature of a co-ownership, a co-owner cannot point to a specific portion of the property owned in common as his own because his share therein remains intangible.[39] The pertinent portion of the deed reads:

2. That for and in consideration of the sum of Six Thousand (₱6,000.00), Pesos, Philippine Currency, paid unto the VENDOR by the VENDEE, the VENDOR hereby SELLS, TRANSFERS, CEDES, and CONVEY unto the VENDEE, his heirs, successors or assigns an **undivided** ONE-FOURTH (¼) portion (50 square meters, more or less, in the particular portion of the lot where the house of the

---

[37] *Gala, et al. v. Ellise-Agro Industrial Corporation, et al.*, 463 Phil. 846, 860 (2003).

[38] *Felices v. Colegado*, G.R. No. L-23374, 30 September 1970, 35 SCRA 173, 178.

[39] *Salatandol v. Retes*, G.R. No. L-38120, 27 June 1988, 162 SCRA 568, 573.

VENDEE now stands) of the above-described residential lot together with all improvements thereon free from all liens and encumbrances.[40] (Emphasis supplied)

The description "undivided ONE-FOURTH (¼) portion (50 square meters, more or less, in the particular portion of the lot where the house of the VENDEE now stands)" shows that the portion sold is still undivided and not sufficiently identified. While the description provides a guide for identifying the location of the lot sold, there was no indication of its exact metes and bounds. This is the reason why petitioner was constrained to cause the survey of the property.[41] As a co-owner of the property, therefore, petitioner has the right to demand partition, a right which does not prescribe.[42]

Ownership of the thing sold is acquired only from the time of delivery thereof, either actual or constructive. Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be inferred.[43] The Court notes that Federico had already delivered the portion he sold to petitioner, subject of course to the execution of a technical survey, when he executed the deed of absolute sale, which is a public instrument.[44] In view of the delivery in law, coupled with petitioner's actual occupation of the portion where his house stands, all that is needed is its segregation from the rest of the property.

---

[40] *Rollo,* p. 47; Deed of Absolute Sale.

[41] Survey Plan, Exhibit "H" Folder of Exhibits.

[42] *Tomas Claudio Memorial College, Inc. v. Court of Appeals,* 374 Phil. 859, 866 (1999).

[43] *Balatbat v. Court of Appeals*, 329 Phil. 858, 870 (1996).

[44] CIVIL CODE, Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be clearly inferred.

WHEREFORE, the petition is *GRANTED*. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 82642 are *SET ASIDE*, and the Decision of the Regional Trial Court of Quezon City, Branch 98 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178366. July 28, 2008]

DOMINADOR A. MOCORRO, JR., *petitioner, vs.* **RODITO RAMIREZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENT; ELUCIDATED. — A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of

conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

2. ID.; ID.; ID.; ID.; EXCEPTIONS. — The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.

3. ID.; ID.; ID.; ID.; ID.; *NUNC PRO TUNC* JUDGMENTS, DEFINED. — *Nunc pro tunc* judgments have been defined and characterized by the Court in the following manner: **The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.** A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. **Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake.**

APPEARANCES OF COUNSEL

Clemencio C. Sabitsana, Jr. for petitioner.
Manuel Benedicto for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

On January 25, 1990, in PGC Case No. 114, the Philippine Gamefowl Commission (PGC), acting on a petition on the issue of who between petitioner Dominador A. Mocorro, Jr. and Rodolfo Azur is entitled to operate a cockpit in the Municipality of Caibiran,

Leyte (now Biliran Province), rendered a decision, the decretal portion of which partly reads:

> WHEREFORE, x x x the Commission RESOLVED, as it hereby resolves to:
>
> 1. Declare and recognize petitioner Dominador A. Mocorro, Jr. to be the rightful cockpit operator in the Municipal[ity] of Caibiran, Leyte, (now Biliran) for being the prior operator;
> 2. Cancel and revoke Registration Certificate No. C87-829 issued in the name of respondent Rodolfo Azur;
> 3. Order the issuance of a Registration Certificate in favor of, and in the name of Petitioner Dominador A. Mocorro, Jr.; x x x

Pursuant to the above decision, the PGC issued in favor of petitioner Registration Certificate No. P90-943 which, as later extended, was to expire on December 31, 1991. Respondent Rodito Ramirez, then Caibiran municipal mayor, also issued Business Permit No. 015 authorizing petitioner to operate his cockpit, the Caibiran (Cockers) Gallera, up to 1991. For its part, the *Sangguniang Bayan* (SB) of Caibiran passed a resolution authorizing petitioner to operate his cockpit for CY 1991.

On January 20, 1992, petitioner applied and paid the fees necessary for the renewal of the registration of his cockpit. Accompanying the application were the requisite local government certificates/permits. For some reason, however, petitioner failed to operate since respondent refused to issue him a business permit, prompting petitioner, through Ricardo Rostata, to address a letter-complaint to the PGC Chairperson questioning respondent's refusal action.

Later developments saw respondent issuing a special permit to one Edwin Rosario for the holding sometime in July 1992 of a *pintakasi* (celebration of cockfighting) in Gallera, Caibiran. This was followed by the issuance of another permit authorizing, starting **August 2, 1992**, and every Sunday thereafter, the holding of cockfights in Azur's cockpit located also in Caibiran.

On August 10, 1992, petitioner filed with the Regional Trial Court (RTC) in Biliran a suit for injunction against respondent

and Azur. Docketed as **Civil Case No. B-0837**, the case, entitled *Dominador A. Mocorro, Jr., represented by Ricardo Rostata v. Mayor Rodito Ramirez and Rodolfo Azur*, was later raffled to Branch 16 of the court.

On March 19, 1993, the RTC issued a writ of preliminary injunction enjoining respondent and Azur from holding any cockfight within Caibiran until further orders of the court. Despite the injunction, cockfights continued to be staged in Caibiran, prompting petitioner to file a motion to cite respondent and Azur in contempt of court.

In their Answer, respondent and Azur drew attention to the cancellation by the SB of petitioner's 1991 business permit for repeated violations of the terms thereof. They also pointed out that Azur, before operating the cockpit, had already complied with all the requirements and secured the necessary business permit.

On November 25, 1993, the RTC issued an Order allowing petitioner to present evidence to support his contempt motion.

In the meantime, Azur continued with, and respondent allowed, the holding of Sunday cockfights in Caibiran.

On **February 17, 1995**, the RTC rendered a Decision,[1] the *fallo* of which reads:

> WHEREFORE, defendants Mayor Rodolfo Ramirez and Rodolfo Azur are therefore found guilty of indirect contempt for contumacious disobedience of and resistance to the March 19, 1993 writ of preliminary injunction issued by this court and they are fined the sum of ₱1,000.00. The March 19, 1993 writ of preliminary injunction is hereby made permanent and defendant Rodito Ramirez and Rodolfo Azur are ordered to pay, jointly and severally, plaintiff Dominador Mocorro, Jr. **actual damages the sum of ₱2,000.00 every Sunday of each week from August 2, 1992 when defendants started to cause the holding of the cockfight** in Pob. Caibaran, Biliran; plus ₱10,000 attorney's fees; ₱5,000.00 litigation expenses; exemplary or corrective damages in the sum of ₱20,000.00 and [to] pay the costs. (Emphasis added.)

---

[1] Penned by Judge Bonifacio Sanz Maceda.

Aggrieved, respondent and Azur interposed an appeal before the Court of Appeals (CA), docketed as **CA-G.R. CV No. 48029**. By a Decision dated **May 31, 2001**, the CA denied the appeal for lack of merit and affirmed the RTC Decision.

On **June 22, 2001**, the CA's May 31, 2001 Decision became final and executory as evidenced by the corresponding Entry of Judgment.[2]

Subsequently, petitioner moved for the issuance of a writ of execution. On April 2, 2002, the RTC granted the motion and issued, on May 27, 2002, the corresponding writ,[3] to wit:

> WHEREFORE, you are hereby commanded that of the goods and chattels of the defendants, Mayor Rodito Ramirez and Rodolfo Azur, you cause to be made the sum of THIRTY-EIGHT THOUSAND PESOS (₱38,000.00) plus 2,000 every Sunday of each week from August 2, 1992[,] when defendants started to cause the holding of the cockfight, together with your lawful fees for service of execution, all in Philippine currencies, and to likewise, return this writ together with your proceedings within the period provided for under the Rules.
>
> But if sufficient personal properties cannot be found whereof t[o] satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of said defendants, you cause to be made the said sum of money in the manner required by law and the Rules of Court.

Sheriff Ludenilo S. Ador's computation of the amount collectibles to implement the issued writ of execution contained the following entries and breakdowns:

SHERIFF'S COMPUTATION[4]

CORRECTIVE DAMAGES----------	20,000.00
LITIGATION EXPENSES ----------	5,000.00
ATTORNEY'S FEES ----------	10,000.00

[2] *Rollo*, p. 48.

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

[4] *Id*. at 51.

Plus ₱2,000.00 every Sunday of each week	
From August 2, 1992 when defendant started	
To cause the holding of cockfight	
(August 2, 1992 to June 22, 2001 finality of judgment)	
August to December 1992----------=21 weeks	
January to December 1993----------=52	
January to December 1994----------=52	
January to December 1995----------=52	
1996----------=52	
1997----------=52	
1998----------=52	
1999----------=52	
2000----------=52	
January to June 22, 2001----------=22	
458 WEEKS	
x 2,000.00	
₱916,000.00	
TOTAL	₱951,000.00
Expenses and publication on notice of sale	8,000.00
TOTAL COLLECTIBLES	959,000.00
LUDENILO S. ADO	(Sgd.)
Sheriff IV	
NOTED:	
ENRIQUE C. ASIS (Sgd.)	
Executive Judge	

On June 11, 2002, the sheriff issued a Notice of Attachment,[5] therein apprising the Register of Deeds of Biliran of the levy on execution made over the rights and participation of respondent on the two parcels of land indicated in the notice, to wit:

ARP No. 04-002-00128

Agricultural land situated at Palenke, Caibiran, Biliran, with survey no. 1224, having an area of 3619.20, with unit value of 195,000.00; market value of 70,575.00; and assessed value at 11,295.00 PhP. Declared in the name of Rodito Ramirez, more particularly bounded as follows: x x x

[5] *Id.* at 52.

ARP No. 04-003-00209

Residential lot located at Bgy. Victory, Caibiran, with an area of 112.05, with unit value of 250.00; market value of 28,013.00, under survey no. 1806-P, with PIN-074-04-003-04-071, assessed at 2,802.00, declared in the name of Rodito Ramirez, more particularly bounded as follows: x x x

On October 23, 2002, the sheriff issued a Notice of Sale on Execution of Real Properties[6] and set a date for public auction.

Meanwhile, on August 7, 2002, respondent, joined by his wife, Gloria, filed a Petition to Exclude Properties from Execution[7] before the RTC against the sheriff and petitioner. The petition yielded the following reasons for the desired exclusion: (1) the two parcels of land do not belong to respondent; and (2) the persons liable under the RTC's decision are Azur and the Municipality of Caibiran, Biliran, not respondent, who was impleaded in the suit in his capacity as municipal mayor.

By Order of November 18, 2002, the RTC denied the petition.[8]

Taking a different tack, respondent filed, on January 9, 2003, an Omnibus Motion to Quash Writ of Execution and to Set Aside Sheriff's Computation,[9] therein alleging that the writ of execution attempts to enforce an incomplete judgment and, in the process, substantially modifies the decision of the RTC; and that the same writ seeks to enforce and execute a void judgment. Respondent argued that the *fallo* of the RTC's decision, while indicating a day, *i.e.*, August 2, 1992, whence his liability shall commence to run, failed to state a terminal date. And in a bid to cure this substantive defect in the *fallo*, Sheriff Ador considered June 22, 2001 as the termination date of payments, a move which respondent viewed as amounting to a modification of an incomplete judgment. Moreover, respondent maintained

---

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

[7] *Id*. at 55-59.

[8] *Id*. at 64-67.

[9] *Id*. at 68-73.

that the *fallo* of the RTC decision disposed that he and Azur are liable to pay petitioner Ph₱10,000 for attorney's fees, Ph₱5,000 for litigation expenses, and Ph₱20,000 for exemplary damages, but the body of the decision never discussed petitioner's entitlement to the said awards.

Petitioner filed his opposition[10] to the omnibus motion.

On **September 8, 2003**, the RTC issued an Order[11] denying respondent's omnibus motion, holding that only this Court can nullify a decision of the CA. The RTC also stated the observation that respondent, in his and Azur's appeal to the CA in CA-G.R. CV No. 48029, and even later in his petition to exclude real properties,[12] never raised, in the assignment of errors, the propriety of the awards adverted to.

Following the denial, per the RTC's Order dated **November 6, 2003**, of his motion for reconsideration, respondent posthaste filed with the CA a petition for *certiorari* under Rule 65 to nullify and set aside the September 8, 2003 and November 6, 2003 Orders of the RTC as well as the Writ of Execution dated May 27, 2002. The petition was docketed as **CA-G.R. SP No. 81074**.

On August 8, 2006, the CA rendered a Decision[13] effectively finding for respondent on the issue of actual damages. The dispositive portion of the decision reads:

> *WHEREFORE*, the instant petition is *PARTIALLY GRANTED*. The assailed Orders dated September 8, 2003 and the November 6, 2003 as well as the Writ of Execution dated May 27, 2002 insofar as said Orders and Writ required petitioner to pay private respondent actual damages, are *SET ASIDE*. The assailed Orders and Writ are *AFFIRMED* in all other respects.
>
> SO ORDERED.

---

[10] *Id*. at 75-77.

[11] *Id*. at 78-83.

[12] *Supra* note 7.

[13] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Pampio A. Abarintos (Chairperson) and Priscilla Baltazar-Padilla.

The CA predicated its above ruling on the following premises:

(1) The *fallo* of the RTC decision rendered in Civil Case No. B-0837 lacks an important data, referring to the exact amount awarded as actual damages. According to the CA, the *fallo* did not state when the said PhP 2,000 per Sunday liability will end; hence, the amount of the award of actual damages cannot be determined;

(2) There is no basis for petitioner's contention holding respondent and Azur liable for actual damages until such time that petitioner can resume holding cockfights in his cockpit arena;

(3) When he ordered respondent to pay actual damages in the amount equivalent to PhP 2,000 x the number of Sundays occurring from August 2, 1992 to June 22, 2001, the RTC judge substantially amended or modified the final and executory February 17, 1995 RTC decision, an amendatory action which is null and void for lack of jurisdiction; and

(4) The adverted defect in the February 17, 1995 decision does not in any way avoid the entire disposition as such defect only affects the award of actual damages. The other awards can be executed.

On May 25, 2007, the CA rejected petitioner's motion for partial reconsideration.

Hence, this petition on the following issues:

I. CA erred in taking jurisdiction over the Petition for *Certiorari* (CA-G.R. SP No. 81074) of the respondent and in eliminating the award of actual damages in favor of the petitioner;

II. CA erred in not finding that the date when the respondent should stop the payment of the weekly actual damage is ascertainable from the decision itself;

III. CA erred in holding that the decision of the RTC, Branch 16, Naval, Biliran which was affirmed by the Ninth Division of the CA was so defective — in failing to state the date when the respondent should stop paying the weekly actual damage of ₱2,000.00 to the petitioner — that the said decision is

void *pro tanto* and cannot be executed with respect to actual damages.

According to petitioner, respondent, by filing his petition for *certiorari* under Rule 65 in CA-G.R. SP No. 81074, in effect prayed for the declaration of nullity of the final and executory May 31, 2001 Decision of the CA in CA-G.R. CV No. 48029 which, for reference, affirmed the February 17, 1995 Decision of the RTC in Biliran in Civil Case No. B-0837.

Petitioner maintains that it was only on January 9, 2003 when respondent, via an *Omnibus Motion to Quash Writ of Execution and to Set Aside Sheriff's Computation*, raised the notion that the writ of execution attempted to enforce an incomplete and void judgment. In net effect, petitioner adds, respondent was questioning the validity of the February 17, 1995 RTC Decision which had already attained finality.

We find for petitioner.

CA-G.R. SP No. 81074, a petition for *certiorari*, which, on its face, sought to nullify the execution processes[14] issued by the Biliran RTC and the underlying awards covered by the writ of execution, strikes the Court to be really a mere ploy, a subterfuge devised to modify a final judgment of the Biliran RTC dated February 17, 1995. If allowed, such stratagem would trifle with and make a farce of a duly promulgated decision that has become final and executory. The Court cannot allow such legal aberration. A definitive final judgment, however erroneous, is no longer subject to change or revision.

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land.[15] The orderly administration

---

[14] November 18, 2002 and September 8, 2003 RTC Orders.

[15] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562; citing *Ramos v. Ramos*, 447 Phil. 114, 119 (2003).

of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down.[16] Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.[17]

The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.[18] *Nunc pro tunc* judgments have been defined and characterized by the Court in the following manner:

> **The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been**. (*Wilmerding vs. Corbin Banking Co., 28 South.*, 640, 641; 126 Ala., 268.)
>
> A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. **Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but**

---

[16] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; citing *Fortich v. Corona*, 352 Phil. 461, 486 (1998).

[17] *Id*. at 404-405; citing *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 271.

[18] *Ramos*, *supra* note 15.

omitted through inadvertence or mistake. (*Perkins vs. Haywood,* 31 N. E., 670, 672.)[19]

Unquestionably, respondent and Azur were adjudged by the RTC jointly and severally liable for actual damages. But the *fallo* of the RTC decision did not indicate how the amount of the actual damages award should be determined. While the decision stated that the award of actual damages in the amount of PhP 2,000 per Sunday was to be computed from August 2, 1992, there is nothing in the *fallo* suggesting at the very least when the PhP 2,000 per Sunday liability will end.

In accordance with the exception for modification of a final judgment, there is a need to amend the decision of the RTC pursuant to the *nunc pro tunc* rule which, we hasten to add, will cause no prejudice to any party. In this regard, justice and equity dictate that respondent and Azur should be held solidarily liable for actual damages in the amount of PhP2,000 for every actual illegal cockfight held, regardless of the staging date, in Azur's cockpit in Caibiran, Biliran, reckoned from August 2, 1992 to June 22, 2001 when the finality of the RTC Decision dated February 17, 1995 set in.

WHEREFORE, the instant petition is hereby *GRANTED*. Accordingly, the Decision dated August 8, 2006 of the CA in CA-G.R. SP No. 81074 is *MODIFIED* in the sense that respondent Rodito Ramirez and Rodolfo Azur are jointly and solidarily liable to petitioner for actual damages in the amount of PhP 2,000 for every actual cockfight held in petitioner's cockpit in Caibiran, Biliran reckoned from August 2, 1992 to June 22, 2001 when the RTC Decision in Civil Case No. B-0837 became final. The RTC, Branch 16 in Naval, Biliran is hereby ordered to issue an amended decision conformably with, or incorporating the modifications set forth in, this Decision.

No pronouncement as to costs.

SO ORDERED.

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

[19] *Briones-Vasquez v. Court of Appeals*, G.R. No. 144882, February 4, 2005, 450 SCRA 482, 492; citing *Lichauco v. Tan Pho*, 51 Phil. 862, 879-881 (1923).

THIRD DIVISION

[G.R. No. 179036. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO MATEO *y* PATAWID,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; POLICE OFFICERS ARE PRESUMED TO HAVE ACTED REGULARLY IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS IN THE ABSENCE OF CLEAR AND CONVINCING PROOF TO THE CONTRARY OR PROOF THAT THEY WERE MOVED BY ILL WILL. — [T]he foregoing testimony of MADAC Operative Fariñas establishes beyond reasonable doubt accused-appellant's culpability. His testimony regarding the circumstances that occurred in the early hours of 28 June 2003 — from the moment their office received a confidential tip from their informer up to the time they accosted appellant — deserve to be given significance as it came from the mouth of a law enforcement officer who enjoys the presumption of regularity in the performance of his duty. Police officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or proof that they were moved by ill will.

2. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE AND AFFIRMATIVE TESTIMONY OFFERED BY THE PROSECUTION. — Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. Denial is an inherently weak defense which must be supported by strong evidence of non-culpability to merit credibility.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ENTRAPMENT; PRIOR SURVEILLANCE IS NOT A PRE-REQUISITE FOR THE VALIDITY OF AN ENTRAPMENT. — Prior surveillance is not a pre-requisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by poseur-buyer MADAC Operative Fariñas. It has also been ruled in *People v. Tranca* that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF TRIAL COURT GIVEN GREAT WEIGHT AND RESPECT ON APPEAL. — The evaluation of testimony is a primary task of trial courts before whom conflicting versions of the same events come up day after day. We emphasize that the trial court's determination on the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. It can thus more easily detect whether a witness is telling the truth or not.

5. ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES WHICH REFER TO MINOR AND INSIGNIFICANT DETAILS CANNOT DESTROY THEIR CREDIBILITY. — [I]nconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; PENALTY. — Under the law, the illegal sale of *shabu* or the brokering of any such transaction carries with it the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000.00) to ten million pesos (₱10,000,000.00), regardless of the quantity and purity

involved. On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (₱300,000.00) to four hundred thousand pesos (₱400,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is the Decision[1] of the Court of Appeals in CA-G.R. H.C. CR No. 00709 dated 31 October 2006 which affirmed the Decision of the Regional Trial Court (RTC) of Makati City, Branch 64, in Criminal Case Nos. 03-2337 and 03-2338, finding accused-appellant Carlito Mateo *y* Patawid guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 30 June 2003, two informations were filed against accused-appellant before the RTC of Makati for violating the provisions of Republic Act No. 9165.

In Criminal Case No. 03-2337, accused-appellant violated Section 5,[2] Article II in the following manner:

---

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Andres Reyes, Jr. and Hakim S. Abdulwahid, concurring. *Rollo*, pp. 2-14.

[2] 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

That on or about the 28th day of June 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver to another zero point ten (0.10) grams, of Methylamphetamine Hydrochloride which is a dangerous drug, in exchange of the amount of Two Hundred Pesos (₱200.00).[3]

On the other hand, in Criminal Case No. 03-2338, accused-appellant Patawid was additionally charged with violation of Section 11, Article II of the same law,[4] committed as follows:

That on or about the 28th day of June 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control a total of zero point two (0.2) gram of Methylamphetamine Hydrochloride which is a dangerous drug.[5]

Accused-appellant pleaded not guilty to both charges when arraigned on 31 July 2003.[6]

---

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.

[3] Records, p. 2.

[4] SEC.11. Possession of Dangerous Drugs. — x x x

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] Records, p. 28.

[6] *Rollo*, p. 7.

During the pre-trial, the prosecution and the defense stipulated on the following: (1) the issuance of Police Investigation Report after the accused was arrested; (2) the qualification of Forensic Chemist Engr. Richard Allan Mangalip; and (3) the Physical Science Report prepared by the Forensic Chemist. By virtue of said stipulations, the testimony of the Forensic Chemist was dispensed with.

Thereafter, the cases were consolidated and tried jointly.

During the trial, the prosecution presented the following witnesses: (a) Makati Anti-Drug Abuse Council (MADAC) Operative Geraldo Fariñas, a member of the Philippine National Police (PNP) and the designated poseur-buyer; (b) Police Officer 2 (PO2) Rodrigo Igno; and (c) MADAC Operative Oscar Gutierrez, as back-up or members of the operation team.

The defense, on the other hand, presented the lone testimony of the accused.

The prosecution's version of the case is as follows:

On 28 June 2003, Captain Rodolfo Doromal of the Office of MADAC received a report from a confidential informant that an *alias* Ato was selling illegal drugs along Kalayaan Avenue, Makati City. Acting on said information, they immediately coordinated with the Drug Enforcement Unit (DEU). Thereupon, PO2 Rodrigo Igno and PO2 Barrameda were dispatched to the MADAC Cluster 4 Office where a briefing was immediately held. MADAC Operative Geraldo Fariñas was designated as poseur-buyer with MADAC Operative Oscar Gutierrez, PO2 Igno and PO2 Barrameda as back-up team. Two ₱100.00 bills were used as buy-bust money. After the briefing, the team, together with the confidential informant, proceeded to Barangay Pitogo, Makati City, for the execution of the buy-bust operation.

At around 8:45 in the evening of 28 June 2003, accused-appellant was found standing along Kalayaan Avenue, Makati City. Upon seeing the accused, the informant and MADAC Operative Fariñas approached him, while the back-up team followed from a distance and positioned themselves. The informant told accused-appellant that MADAC Operative Fariñas was

interested in buying *shabu*. Accused-appellant then asked the informant if the latter was okay,[7] and he replied in the affirmative. MADAC Operative Fariñas handed over the buy-bust money to the accused-appellant. Thereafter, the latter took out from his pocket a plastic sachet and handed the same to MADAC Operative Fariñas. After taking the plastic sachet believed to contain *shabu*, MADAC Operative Fariñas gave the pre-arranged signal by removing his face towel, which was placed on his right shoulder, to signify that the sale was consummated.

Upon seeing the pre-arranged signal, MADAC Operative Gutierrez, PO2 Igno and PO2 Barrameda came over and asked the accused to empty his pocket. They introduced themselves as MADAC Operatives and Police Officers, and thereafter arrested him. MADAC Operative Gutierrez recovered from the accused the buy-bust money and one black coin purse containing 7 plastic sachets of suspected *shabu*.[8] PO2 Barrameda informed the accused of the latter's constitutional rights,[9] while PO2 Igno asked for the full name of the accused.[10] MADAC Operative Fariñas marked the pieces of evidence recovered from the accused by placing therein the initials of the accused.[11] The Custodian Officer prepared the list of items taken from the accused and turned over the list to the DEU.[12] Thereafter, the accused was taken to the DEU and afterwards to the PNP Crime Laboratory for drug testing. The dangerous drugs were brought to the PNP Crime Laboratory for examination,[13] which later confirmed the presence of Methylamphetamine hydrochloride.[14]

---

[7] TSN, 9 October 2003, pp. 18-20.

[8] TSN, 9 October 2003, p. 10; TSN, 3 June 2004, p. 15; 9 June 2004, p. 9.

[9] TSN, 3 June 2004, p. 15.

[10] *Id*.

[11] TSN, 9 October 2003, p. 9.

[12] *Id*. at 33.

[13] TSN, 3 June 2004, p. 18.

[14] Records, p. 17.

Expectedly, accused-appellant presented a disparate narration of the incident:

Accused-appellant claimed that at around 9:00 o'clock in the evening of 28 June 2003, while he was walking along Kalayaan Avenue, Makati City, on his way to his live-in partner's house in Bohol Street, Barangay Pitogo, two men suddenly approached and grabbed him claiming they wanted to ask him something. They made him board a blue Toyota Revo and brought him to the *barangay* hall. The two men asked him if he knew a certain "Eboy" and to point him out to them. The accused told them that he could not point out Eboy because he did not know him and that he was not living in that place. Besides, he said he was in that place because he fetched his live-in partner. When he did not heed their demands, he was brought to a room where they took his picture. He saw plastic sachets of *shabu* inside the room.[15]

After trial, the court *a quo* found accused-appellant guilty as charged. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered against the accused CARLITO MATEO *y* PATAWID, *ALIAS* "ATO" as follows:

1. Finding him, GUILTY beyond reasonable doubt of the crime of Violation of Section 5 of R.A. No. 9165 (Crim. Case No. 03-2337) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00;

2. Finding him, GUILTY beyond reasonable doubt of the crime of Violation of Section II of R.A. No. 9165 (Crim. Case No. 03-2338) and considering that the combined weight of the subject *shabu* is only 0.2 gram sentencing him to suffer the penalty of twelve (12) years and one (1) day of imprisonment, and a fine of ₱300,000.00

The Branch Clerk of Court is directed to transmit to the Philippines Drug Enforcement Agency (PDEA) the one plastic sachet of *shabu* (0.10) gram subject matter of Criminal Case No. 03-2337 and the

[15] TSN, 13 January 2005, p. 10.

seven plastic sachets of shabu with combined weight of 0.20 gram subject of Criminal Case No. 03-2338 for said agency's appropriate disposition.[16]

On 31 October 2006, the Court of Appeals affirmed the findings and conclusion of the RTC, the *fallo* of which reads:

> WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Decision dated February 10, 2005 rendered by the Regional Trial Court of Makati City, Branch 64, in Criminal Cases Nos. 03-2337 and 03-2338 finding the accused appellant guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act No. 9165 is affirmed *in toto.*[17]

Accused-appellant filed a Notice of Appeal on 20 November 2006. The Court of Appeals forwarded the records of the case to us for further review.

In Our Resolution[18] dated 8 October 2007, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. Both accused-appellant[19] and the People[20] opted not to file supplemental briefs on the ground that they had exhaustively argued all the relevant issues in their respective briefs and that the filing thereof would only entail a repetition of the arguments already discussed.

Accused-appellant raised the following errors[21]:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT; and

---

[16] Records, p. 104.

[17] CA *rollo*, pp. 88-89.

[18] *Rollo*, p. 18.

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

[20] *Id.* at 22-23.

[21] CA *rollo*, p. 40.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECTION WITNESSES.

Accused-appellant contends that the trial court erred in convicting him as his guilt was not proved beyond reasonable doubt. Further, he alleges that the police officers dispensed with the surveillance and immediately conducted the buy-bust operation. He also maintains that there was no basis for the trial court's conviction due to the apparent inconsistencies in the testimonies of the prosecution witnesses.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[22] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[23]

In the present case, all the elements of the crime have been sufficiently established. Prosecution witnesses MADAC Operative Fariñas, PO2 Igno and MADAC Operative Gutierrez consistently testified that a buy-bust operation did indeed take place. The *shabu* subject of the sale was presented and duly identified in open court. MADAC Operative Fariñas, being the poseur-buyer, positively identified accused-appellant Mateo as the person who sold the sachet containing a white crystalline substance,[24] which was later confirmed by a chemical analysis to be *shabu*.[25] The white crystalline substance was placed in a sachet by MADAC Operative Fariñas who marked the same with the initial "CMP"

---

[22] *People v. Macabalang*, G.R. No. 168694, 27 November 2006, 508 SCRA 282, 293-294.

[23] *People v. Padasin*, 445 Phil. 448, 461 (2003).

[24] Records, p. 17.

[25] *Id*.

representing the name of accused Carlito Mateo *y* Patawid. Incidentally, MADAC Operative Fariñas also identified the six (6) sachets of *shabu* which were placed in the other six sachets and which he, likewise, marked with the initial "CMP." He, together with team members PO2 Igno and MADAC Operative Gutierrez, then brought the sachets with *shabu* to the PNP Crime Laboratory for examination after securing a letter-request for examination from the DEU Office.

Relevant portions of MADAC Operative Fariñas's testimony that detailed the events leading to the arrest of accused-appellant are as follows:

PROS. BAGAOISAN

Who among you walked in going to Kalayaan?

WITNESS

The informant, PO2 Barrameda, PO2 Igno and Oscar Gutierrez, sir.

PROS. BAGAOISAN

What time did you arrive at Kalayaan St?

WITNESS:

At about 8:45 pm., sir.

PROS. BAGAOISAN

And, what happened after you arrived at Kalayaan St.?

WITNESS

I was introduced by the informant to *Alias* Ato, sir.

PROS. BAGAOISAN

When you first saw this *Alias* Ato, what was he doing?

WITNESS

He was standing along Kalayaan Avenue, sir.

PROS. BAGAOISAN

How were you introduced to *Alias* Ato?

WITNESS

That I was in need and I was going to buy *shabu*, sir.

PROS. BAGAOISAN

What happened after you were introduced to *Alias* Ato?

WITNESS

I immediately handed over to him the 200-peso bills, sir.

PROS. BAGAOISAN

After you handed over these 200-peso bills to *Alias* Ato, what happened next?

WITNESS

He immediately drew from his right pocket a black coin purse, sir.

PROS. BAGAOISAN

And, what happened after he drew the black coin purse?

WITNESS

From there he drew the plastic sachet, sir.

PROS. BAGAOISAN

And, what did he do to this plastic sachet that he drew from this black coin purse?

WITNESS

He handed it over to me, sir.

PROS. BAGAOISAN

After he handed over to you the plastic sachet, what happened next?

WITNESS

I took out my face towel that was placed in my right shoulder signifying that the transaction have already been consummated, sir.

PROS. BAGAOISAN

You mentioned, Mr. Witness, that *Alias* Ato took out a plastic sachet from the coin purse, if that item which he took out from the coin purse will be shown to you will you be able to identify the same?

WITNESS

Yes, sir.

PROS. BAGAOISAN

I am showing you, Mr. Witness this plastic sachet containing white crystalline substance, will you please go over the same and tell us what relation does this have to the item you purchase from *Alias* Ato?

WITNESS:

That is the very one, sir.

PROS. BAGAOISAN

Why are you so sure that this is the same item that you bought from *Alias* Ato?

WITNESS

I placed markings there, sir.

PROS. BAGAOISAN

What markings did you place in this transparent plastic sachet.

WITNESS

CMP. Sir.

PROS. BAGAOISAN

And, what does this CMP stand for?

WITNESS:

Carlito Mateo *y* Patawid, sir.

PROS. BAGAOISAN

Why CMP, where did you get this name?

WITNESS

PO2 Igno asked for his full name, sir.

PROS. BAGAOISAN

This crystalline substance contained in plastic sachet was previously marked as Exhibit G, Your Honor, and this is the subject of sale. Now, after you gave this signal removing the towel from your right shoulder, what happened next?

WITNESS:

My back up immediately approached us, sir.

PROS. BAGAOISAN

And, who were these back up who approached you?

WITNESS

Oscar Gutierrez, PO2 Igno and PO2 Barrameda, sir.

PROS. BAGAOISAN

After your back up arrived, what did you do next?

WITNESS

I introduced to *Alias* Ato that I am a member of MADAC, sir.

PROS. BAGAOISAN

After you introduced yourself as a member of MADAC, what happened next?

WITNESS

We arrested him, sir.

PROS. BAGAOISAN

And, what happened after you arrested him?

WITNESS

My back up Oscar Gutierrez recovered seven more plastic sachets suspected to be *shabu*, sir.

PROS. BAGAOISAN

Where did he recover this seven other plastic sachets?

WITNESS

At the right front pocket, sir.

PROS. BAGAOISAN

If those seven plastic sachets will be shown to you, will you be able to identify the same?

WITNESS

Yes, sir.

PROS. BAGAOISAN

I am showing to you, Mr. Witness, several plastic sachets, seven plastic sachets, will you please go over the same and tell us what relation does this have to the seven plastic sachets recovered by your back (sic) to the possession of *Alias* Ato?

WITNESS

CMP-1, CMP-2, CMP-3, CMP-4, CMP-5, CMP-6 and CMP-7, these are the plastic sachets that he recovered, sir.

PROS. BAGAOISAN

And, you read before us markings CMP-1 to CMP-7, what does this markings stands for?

WITNESS

Carlito Mateo *y* Patawid, sir.

PROS. BAGAOISAN

At what point in time did you place the markings to this transparent plastic sachets including the sachet which is the subject of sale?

WITNESS

Right at the place of operation, sir.

PROS. BAGAOISAN

Now, Mr. Witness, earlier you mentioned of a black coin purse where *Alias* Ato drew a plastic sachet, now, if that black coin purse will be shown to you, will you able to identify the same?

WITNESS

Yes, sir.

PROS. BAGAOISAN

I am showing to you black coin purse, will you please go over the same and tell us what relation does this have to the black coin purse where *Alias* Ato drew a transparent plastic sachet the one subject matter of the sale?

WITNESS

The *shabu* was taken out from the black coin purse, sir.

PROS. BAGAOISAN

This black coin purse was previously marked as Exhibit M, Your Honor.

COURT

Now, who recovered that black coin purse?

WITNESS

Oscar Gutierrez, my back up, sir.

PROS. BAGAOISAN

Now, do you know, Mr. Witness, if aside from the items taken from this black coin purse, I am referring to the sachet the sachet (sic) that you purchased, where there any other contents in the black coin purse?

WITNESS

No more, sir.

PROS. BAGAOISAN

So, there was only one sachet contained in the black coin purse?

WITNESS

There were eight plastic sachets, the one that was the subject of the sale, and seven other plastic sachets that were later on recovered, sir.

PROS. BAGAOISAN

> Now, Mr. Witness, do you recall having issued a statement in connection with the operation that you conducted?

WITNESS

> Yes, sir.[26]

We agree with the Court of Appeals that the foregoing testimony of MADAC Operative Fariñas establishes beyond reasonable doubt accused-appellant's culpability. His testimony regarding the circumstances that occurred in the early hours of 28 June 2003 — from the moment their office received a confidential tip from their informer up to the time they accosted appellant — deserve to be given significance as it came from the mouth of a law enforcement officer who enjoys the presumption of regularity in the performance of his duty. Police officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or proof that they were moved by ill will.[27]

Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused.[28] A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.[29] Denial is an inherently weak defense which must be supported by strong evidence of non-culpability to merit credibility.[30]

---

[26] TSN, 9 October 2003, pp. 7-12.

[27] *People v. Torres*, G.R. No. 170837, 12 September 2006, 501 SCRA 591, 609, cited in *People v. Huang Zhen Hua*, G.R. No. 139301, 29 September 2004, 439 SCRA 350, 381.

[28] *People v. Vargas*, 327 Phil. 387, 397 (1996).

[29] *People v. Gonzales*, 417 Phil. 342, 353 (2001).

[30] *People v. Hivela*, 373 Phil. 600, 605 (1999).

We further reject accused-appellant's argument that no surveillance was conducted before the buy-bust operation.

Prior surveillance is not a pre-requisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant.[31] In the instant case, the arresting officers were led to the scene by poseur-buyer MADAC Operative Fariñas. It has also been ruled in *People v. Tranca* [32] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

Accused-appellant also argued that the prosecution failed to prove that the confiscated drug and the specimen that was weighed and examined in the crime laboratory was identified as the one taken from the accused-appellant.

A forensic examination was conducted by Police Inspector and Forensic Chemical Officer Engr. Richard Allan B. Mangalip and the drugs taken were weighed as shown by Report No. D-777-038,[33] to wit:

A-1 (CMP) = 0.10g	A-5 (CMP-4) = 0.01g
A-2 (CMP-1) = 0.05g	A-6 (CMP-5) = 0.03g
A-3 (CMP-2) = 0.03g	A-7 (CMP-6) = 0.04g
A-4 (CMP-3)= 0.01g	A -8 (CMP-7)= 0.03g

Prosecution witness PO2 Igno was presented and he identified the plastic sachets of *shabu* which all bore the initials "CMP." He substantially corroborated the testimony of Fariñas on all material points. Thus:

Pros. Bagaoisan

I am showing to you Mr. Witness these coin purse and eight (8) plastic sachets containing white crystalline substance. Please go

[31] *People v. Alao*, 379 Phil. 402, 413 (2000); *People v. Lacbanes*, 336 Phil. 933, 941 (1997); *People v. Ganguso*, G.R. No. 115430, 23 November 1995, 250 SCRA 268, 278-279.

[32] G.R. No. 110357, 17 August 1994, 235 SCRA 455, 463.

[33] Records, p. 17.

over the same and tell us if this is the same coin purse recovered from the accused and tell us also which of these plastic sachets were the subject of sale transaction and the subject of possession.

Witness

This is the same coin purse where these (7) plastic sachets with suspected *shabu* are contained. This sachet with marking "CMP" was the subject of sale transaction while the sachets with markings "CMP-1" to "CMP-7" were the subject of possession.

Pros. Bagaoisan

The witness Your Honor identified Exhibit "M" as the coin purse where these seven (7) plastic sachets of suspected shabu are contained. The witness identified Exhibits "E" as the subject of sale while Exhibits "F" to "L" as the subject of possession of the accused. Mr. Witness, where did you bring the accused after you arrested him?

Witness

We brought him to the DEU office, sir.

Pros. Bagaoisan

And what did you do with the dangerous drugs subject matter of these cases?

A We brought the same to the PNP Crime Laboratory for examination, sir.[34]

Another prosecution witness, MADAC Operative Oscar Gutierrez, identified the sachets of *shabu* and similarly corroborated the testimonies of MADAC Operative Fariñas and PO2 Igno on the details of the incident.

Pros. Bagaoisan

Mr. Witness, you also mentioned in this affidavit that aside from the buy bust money you were also able to recover a black coin purse containing seven (7) plastic sachets of suspected shabu. Now, if that black coin purse will be shown to you, would you be able to identify the same?

---

[34] TSN, 3 June 2004, pp. 17-18.

Witness

Yes, sir.

Q. I'm showing to you this black coin purse previously marked as Exhibit "M". Will you please go over it and tell us what relation does this have to the black coin purse that you recovered from the possession of the accused?

A. This is the same, sir.

Q. If the seven (7) plastic sachets containing *shabu* will be shown to you, would you be able to identify the same?

Witness

Yes, sir.

Pros. Bagaoisan

I'm showing to you these seven (7) plastic sachets of suspected *shabu* contained in this black coin purse. Will you please go over the same and tell us what relation do these have to the plastic sachets of *shabu* which were recovered from the possession of the accused?

Witness

These are the same, sir.

Pros. Bagaoisan

Your Honor, the witness identified the seven (7) plastic sachets containing white crystalline substance which were previously marked as Exhibits "F" to "L". The witness claims that these are the same plastic sachets containing suspected *shabu* which are contained in that black coin purse recovered from the possession of the accused. Why are you certain that these are the same sachets that were contained in that black coin purse?

Witness

Because of the initial "CMP", sir.

Pros. Bagaoisan

Were you able to see the *shabu* subject matter of the sale transaction between the poseur buyer and the accused?

A No sir, only the exchange.

Q After you have arrested the accused, where did you bring him?

A At the DEU office, sir.

Q What happened there?

A We asked for a request for drug test, sir.

Q What about the drugs subject matter of these cases, what did you do with them?

A We brought the same to PNP Crime Laboratory for examination, sir.[35]

It is worth noting that the defense failed to point out any single mistake or inconsistency in the testimonies of the policemen. Consequently, the respective rulings of the trial court and the Court of Appeals upholding the regularity and legitimacy of the conduct of the buy-bust operation must be affirmed.

The evaluation of testimony is a primary task of trial courts before whom conflicting versions of the same events come up day after day. We emphasize that the trial court's determination on the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. It can thus more easily detect whether a witness is telling the truth or not.[36]

Besides, we have held that inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor.[37]

---

[35] TSN, 9 June 2004, pp. 9-11.

[36] *People v. Vallador*, 327 Phil. 303, 310-311 (1996).

[37] *Id.* at 312.

In light of the foregoing, we rule that the guilt of accused-appellant of the crimes charged have been established beyond reasonable doubt. A determination of the appropriate penalties to be imposed upon him is now in order.

Under the law, the illegal sale of *shabu* or the brokering of any such transaction carries with it the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000.00) to ten million pesos (₱10,000,000.00), regardless of the quantity and purity involved.[38] On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (₱300,000.00) to four hundred thousand pesos (₱400,000.00).[39]

In the imposition of the proper penalty, the courts, taking into account the circumstances attendant in the commission of the offense, are given the discretion to impose either life imprisonment or death, and the fine as provided for by law. In the light, however, of the effectivity of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Consequently, the penalty to be meted out to accused-appellant shall only be life imprisonment and fine.[40] Hence, the penalty of life imprisonment and a fine of ₱500,000.00 were properly imposed on accused-appellant in Criminal Case No. 03-2337-D for illegal sale of *shabu*.

As regards the penalty imposed in Criminal Case No. 03-2338, the same should be modified. The period of imprisonment imposed should not be a straight penalty, but should be an indeterminate penalty. Applying the Indeterminate Sentence Law, accused-appellant is sentenced to twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum. The ₱300,000.00 fine imposed by the trial court is affirmed.

---

[38] Republic Act No. 9165, Article II, Section 5.

[39] *Id*. at Section 11.

[40] *Id*.

WHEREFORE, premises considered, the decision dated 31 October 2006 of the Court of Appeals in CA-G.R. H.C. CR No. 00709, affirming *in toto* the Decision of the Regional Trial Court of Makati City, Branch 64, in Criminal Cases No. 03-2337 and No. 03-2338, is hereby *AFFIRMED* with the *MODIFICATION* that the penalty of imprisonment imposed in Criminal Case No. 03-2338 shall be twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179478. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JINGGOY MATEO *y* RODRIGUEZ,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; NON-COMPLIANCE WITH MAKING OF AN INVENTORY AND PHOTOGRAPHING OF DRUGS CONFISCATED AND/OR SEIZED WILL NOT RENDER THE DRUGS INADMISSIBLE IN EVIDENCE. — [D]efendant-appellant's defense of alleged non-compliance by the arresting officers with Section 21 of Republic Act No. 9165 was raised belatedly and for the first time on appeal. This is not the first time that this Court has encountered an issue like the one in the instant case. Recently, in *People v. Norberto del Monte y Gapay @ Obet*, this Court ruled that non-compliance with Section 21 would not render an accused's arrest illegal or the items seized/confiscated from him

inadmissible. This Court succinctly pronounced: We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules.* For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. One example is that provided in Section 31 of Rule 132 of the Rules of Court wherein a party producing a document as genuine which has been altered and appears to be altered after its execution, in a part material to the question in dispute, must account for the alteration. His failure to do so shall make the document inadmissible in evidence. This is clearly provided for in the rules.

2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OBJECTION TO THE ADMISSIBILITY OF EVIDENCE RAISED FOR THE FIRST TIME ON APPEAL CANNOT BE CONSIDERED. — What is even more telling is the fact that accused-appellant was not shown to have challenged the custody or the issue of disposition and preservation of the subject drug before the RTC. And neither did he raise objections before the Court of Appeals. Accused-appellant cannot be allowed too late in the day to question the integrity and evidentiary value of the seized items. Thus, in *People v. Sta. Maria,* this Court underscored the rule that objection to the admissibility of evidence raised for the first time on appeal cannot be considered: Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

3. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE APPELLATE COURT ARE

GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT. — [P]rosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation; under these circumstances, the Court relies on the rule that the weighing of evidence, particularly conflicts in the testimonies of witnesses, is best left to the discretion of the trial court, which had the best opportunity to observe their demeanor, conduct and manner while testifying. Such an opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears on the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. When this Court is asked to go over the evidence presented by the parties and to analyze, assess and weigh the same to ascertain if the trial court, as affirmed by the appellate court, was correct in according superior credit to this or that piece of evidence and, eventually, to the totality of the evidence of one party or the other, the Court will not do the same. When the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon the Court. In the instant case, we find no compelling reason to reverse the findings of the RTC, as affirmed by the Court of Appeals.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DRUGS; NECESSARY ELEMENTS FOR THE PROSECUTION THEREOF, ESTABLISHED IN CASE AT BAR. — [A]ll the necessary elements for the prosecution of the illegal sale of drugs were established. The elements are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. It is beyond reasonable doubt that the transaction actually took place, as ruled by the trial court and affirmed by the appellate court. Prosecution witness PO2 Ortiz narrated that he was introduced by the informant to defendant-appellant as a buyer of *shabu*. PO2 Ortiz then told defendant-appellant that he was going to buy *shabu* worth ₱200.00. PO2 Ortiz was then handed a small plastic sachet containing the prohibited drug. After his receipt of the item, he handed defendant-appellant the money. PO2 Ortiz then gave the pre-arranged signal and introduced

himself to defendant-appellant as a police officer. Following the pre-arranged signal, the rest of the team rushed to the scene.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PUBLIC OFFICERS ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES REGULARLY; EXCEPTIONS FIND NO APPLICATION IN CASE AT BAR. — The presumption that the public officers performed their duties regularly during the buy-bust operation was not overturned. Restated, the rule is that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly. This presumption can be overturned if clear and convincing evidence is presented to prove either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. In this case, appellant failed to present said evidence.

6. CRIMINAL LAW; ENTRAPMENT; BUY-BUST OPERATION, DEFINED. — Jurisprudence has established that a buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

The instant Appeal stemmed from an Information,[1] dated 15 January 2003, indicting defendant-appellant Jinggoy Mateo *y* Rodriguez for violation of Article II, Section 5[2] of Republic Act

[1] Records, p. 1.

[2] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled*

No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and filed with the Regional Trial Court (RTC) of Quezon City, Branch 103. The inculpatory portion of the Information, docketed as Criminal Case No. Q-03-114484, reads:

That on or about the 14th day of January, 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell,

---

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.

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.

dispense, deliver, transport or distribute any dangerous drug, did, then and there, [willfully], and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, one (1) transparent plastic sachet of white crystalline substance containing Zero Point Twenty (0.20) gram of Methylamphetamine Hydrochloride, a dangerous drug.[3]

Upon arraignment on 25 August 2002, defendant-appellant pleaded not guilty.[4] Trial on the merits ensued.

Evidence for the prosecution adduced before the RTC consisted of the sole testimony of witness Police Officer 2 Joseph Ortiz (PO2 Ortiz) who established that in the early morning of 14 June 2003, while he was on "stand-by" duty at the Central Police District in Camp Karingal, Quezon City, his team leader, Senior Police Officer 2 (SPO2) Dante Nagera, upon the tip of an informant ordered him and the rest of his teammates, namely, PO3 Leonardo Ramos, PO1 Peggy Lynne Vargas, and PO1 Estelito Mortega to conduct a buy-bust operation against defendant-appellant Jinggoy Mateo, who was allegedly selling illegal drugs at Sitio Pajo, Baesa, Quezon City.[5] Per instructions, PO2 Ortiz was tasked to pose as the poseur-buyer. Following the briefing, his team leader handed him a ₱200.00 bill which PO2 Ortiz marked with his initials "JO."

On the same day, at around 3:30 a.m., the group, together with their informant, boarded an owner-type jeep and proceeded to the designated place. PO2 Ortiz and the informant managed to locate defendant-appellant in a squatter's area in Sitio Pajo. They found him standing outside his house. The informant later introduced PO2 Ortiz to defendant-appellant. PO2 Ortiz told defendant-appellant that he was going to buy *shabu* or methamphetamine hydrochloride worth ₱200.00. Defendant-appellant replied, "*Sige, bibili ka*."[6] Defendant-appellant then handed a small plastic sachet to PO2 Ortiz, and in exchange,

---

[3] Records, p. 1.

[4] *Id*. at 20.

[5] TSN, 9 March 2004, p. 4.

[6] *Id*. at 9.

the latter gave him the marked ₱200.00 bill. Subsequently, PO2 Ortiz lit a cigarette, the pre-arranged signal to the rest of the buy-bust team that he had bought *shabu*. He introduced himself to defendant-appellant as a policeman, and together with the other members of the operation, arrested the defendant-appellant who was caught by surprise.[7] He informed appellant of his right to remain silent, and of the fact that he would be charged with violation of Republic Act No. 9165.[8] They brought him to Camp Karingal, Quezon City.[9] Later, PO2 Ortiz sealed the transparent sachet containing the alleged *shabu*, marked the sachet with his initials, "JO,"[10] and turned it over to the Desk Officer and then to the investigator.

In his testimony, defendant-appellant declared that he is married with two children, and that he earns ₱200.00 a day as an assistant to his aunt who operates a video game outlet. For his defense, he posited a contrary account of what transpired. Per his narration, on 14 January 2003 at around 4:00 in the morning, he was suffering from a painful stomach.[11] He went to the comfort room which was located 15 meters[12] outside his house. Upon coming out of the comfort room, he saw that there was a commotion. He saw several people chasing one another. He also saw his neighbor Marichu Ramos, who told him, "*Jinggoy, mukhang may nagkakagulo diyan*." He remained outside, near the comfort room. Later, a man in a police uniform and a woman in plain clothes[13] approached him, handcuffed him, and put him in a van.[14] He was frisked, but after searching him, they did not find anything in his possession.[15] He was then brought

[7] *Id*. at 10-11.

[8] *Id*. at 20.

[9] *Id*. at 11.

[10] *Id*. at 12.

[11] TSN, 24 June 2004, p. 3.

[12] *Id*. at 9.

[13] *Id*. at 11.

[14] *Id*. at 5.

[15] *Id*.

to Camp Karingal and detained therein. He was, however, never informed of the charges filed against him.[16] Defendant-appellant added that it was only two weeks later from the time of his arrest when he was brought for his inquest. On cross-examination, he denied seeing a transparent plastic sachet containing *shabu* and buy-bust marked money being turned over by the police officers to the Desk Officer in Camp Karingal.[17] He also admitted that a day after he was arrested, he was brought to the Prosecutor's Office for an inquest before the fiscal, where he was apprised of the charges against him.[18] Finally, he consistently declared that he did not resist arrest,[19] nor did he protest when he was brought to the police station despite knowing that he did not commit anything illegal.[20]

The defense also offered the testimony of Marichu Ramos, defendant-appellant's neighbor, to prove that on the day of the arrest, there was no buy-bust operation that happened within the vicinity of Sitio Pajo, Quezon City. Per her statement, on 14 January 2003 at about 4:00 in the morning, she went outside her house to wait for her *Tita* Carmen to come home from the market. She saw defendant-appellant coming out of the comfort room. They engaged in a conversation when she saw two male persons approach them.[21] They handcuffed defendant-appellant.[22] Then, she saw them take defendant-appellant inside a van. She then informed defendant-appellant's wife that her husband had been arrested.[23]

A forensic examination was conducted on the specimen, subject matter of the case, which showed that the article recovered

---

[16] *Id*. at 6.

[17] *Id*. at 14.

[18] *Id*. at 15.

[19] *Id*. at 13.

[20] *Id*. at 14.

[21] TSN, 17 February 2005, p. 10.

[22] *Id*. at 4.

[23] *Id*. at 6.

from defendant-appellant during the buy-bust operation was *shabu* or methylamphetamine hydrochloride.[24] On 9 March 2004, the parties stipulated the following pertinent facts, to wit:

2. That Chemistry Report No. D-069-03 was issued by the Forensic Chemist Eng. (sic) Leonard Jabonillo who made the examination on the specimen, subject matter of this case with the finding that said specimen is positive for methylamphetamine hydrochloride;

3. That Certification was issued and was subscribed and sworn to by the Administering Officer;

4. That attached to the report is the transparent plastic sachet with the marking D-069-03 and the marking placed by the Forensic Chemist;

5. That the chemist has no personal knowledge of the fact of the arrest of [defendant-appellant]. He only conducted the examination on the specimen, subject matter of this case.[25]

With the above-quoted stipulation, the testimony of Forensic Chemist Engr. Leonard M. Jabonillo was dispensed with.

After the defense rested its case, the RTC rendered its Decision[26] on 15 July 2005. The decretal portion of the judgment of conviction disposes as follows:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered finding the accused Jinggoy Mateo *y* Rodriguez GUILTY

---

[24] Chemistry Report No. D-069-2003 as filed by Engr. Leonard M. Jabonillo (Philippine National Police Crime Laboratory, Central Police District Crime Laboratory Office) on the specimen submitted: A- one (1) heat-sealed transparent plastic sachet with markings "JO-JM-S" containing 0.20 gm of white crystalline substance, yielded, thus:

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. (Records, p. 6.)

[25] *Id*. at 39.

[26] Penned by Presiding Judge Jaime N. Salazar, Jr.; *id*. at 76-78.

beyond reasonable doubt of violating Section 5 of R.A. 9165 as charged and he is hereby sentenced to suffer a jail term of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The drug involved in this case is hereby ordered transmitted to the PDEA, thru DDB for proper disposition.[27]

The RTC gave scant merit to defendant-appellant's alibi and concluded that his arrest was for a legal cause. It theorized that if credence be given to defendant-appellant's version, his neighbor and witness, Marichu Ramos, who was also in a similar situation, should also have been indiscriminately arrested. The RTC found no reason to attribute ill motive on the part of the arresting police officers in light of the fact that the crime scene was in an area that was well-lighted, with people passing by the area, and with a close witness beside them, such as defendant-appellant's neighbor. The RTC further underscored that defendant-appellant's arrest was previously reported to the Philippine Drug Enforcement Agency (PDEA). It was also established that defendant was brought to the inquest fiscal a day after his detention, and no allegation whatsoever was shown that the police officers arrested defendant-appellant for the purpose of extortion.

Dissatisfied, defendant-appellant appealed to the Court of Appeals, which affirmed the ruling of the RTC. Hence, in a Decision dated 15 February 2007, the appellate court decreed:

WHEREFORE, finding no error in the judgment appealed from, the Court hereby AFFIRMS the same.[28]

The Court of Appeals, finding that no decisive facts or circumstances were overlooked by the court *a quo*, accorded great respect to the factual findings of the RTC. In the same manner, the Court of Appeals struck down defendant-appellant's defense of denial and alibi, contending that the same cannot prevail over the positive identification by the poseur-buyer PO2 Ortiz. Moreover, the appellate court found no convincing evidence

---

[27] *Id*. at 78.

[28] CA *rollo*, p. 93.

that the police officers were wrongfully motivated, nor were they shown not to have been properly performing their duties when they conducted the buy-bust operation. Given such findings, the Court of Appeals relied on the presumption of regularity in the performance of official duty, and affirmed defendant-appellant's conviction.

From the above Decision, defendant-appellant filed an Appeal with this Court. The records of this case were thereby forwarded by the Court of Appeals pursuant to its Resolution dated 7 June 2007, giving due course to defendant-appellant's Notice of Appeal.[29]

In the instant Appeal, defendant-appellant assigns the following errors, to wit:

I

THE COURT OF APPEALS GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE [DEFENDANT]-APPELLANT NOTWITHSTANDING THE ARRESTING OFFICERS' PATENT NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

II

THE COURT OF APPEALS GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE [DEFENDANT]-APPELLANT NOTWITHSTANDING THE FAILURE OF THE ARRESTING OFFICERS TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DANGEROUS DRUG.[30]

Defendant-appellant argues mainly that the arresting officers failed to comply with the requirements for the proper custody of the seized dangerous drugs under Section 21[31] of Republic

---

[29] In accordance with Sec. 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases (A.M. No. 00-5-03-SC), as the penalty of life imprisonment is involved in this case.

[30] *Rollo,* p. 24.

[31] SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia*

Act No. 9165. According to defendant-appellant, the arresting team should have conducted a physical inventory of the items seized and taken a photograph thereof in the presence of the accused, a representative each from the media and the Department of Justice, and any elected public official who shall further be required to sign copies of the said inventory. It is further claimed that the arresting officers failed to preserve the integrity and evidentiary value of the seized dangerous drug in accordance with the law by leaving the plastic sachet unprotected and susceptible to tampering during the course of its transfer from the scene of the crime to the police headquarters.

The Appeal is without merit.

Initially, it is best to emphasize that defendant-appellant's defense of alleged non-compliance by the arresting officers with Section 21 of Republic Act No. 9165 was raised belatedly and for the first time on appeal. This is not the first time that this Court has encountered an issue like the one in the instant case. Recently, in *People v. Norberto del Monte y Gapay @ Obet*,[32] this Court ruled that non-compliance with Section 21 would not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[33] This Court succinctly pronounced:

We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing

---

and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[32] G.R No. 179940, 23 April 2008.

[33] *Id*.

of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules.* For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. One example is that provided in Section 31 of Rule 132 of the Rules of Court wherein a party producing a document as genuine which has been altered and appears to be altered after its execution, in a part material to the question in dispute, must account for the alteration. His failure do so shall make the document inadmissible in evidence. This is clearly provided for in the rules.[34]

The rule was similarly laid down in *People v. Pringas*,[35] in which this Court had the occasion to rule on the same issue, thus:

As regards Section 21 of Republic Act No. 9165, appellant insists there was a violation of said section when pictures, showing him together with the confiscated *shabu,* were not immediately taken after his arrest. He added that the Joint Affidavit of Arrest of the apprehending team did not indicate if the members thereof physically made an inventory of the illegal drugs in the presence of the appellant or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and given a copy thereof. In short, appellant insists that non-compliance with Section 21 regarding the custody and disposition of the confiscated/seized dangerous drugs and paraphernalia, *i.e.*, the taking of pictures and the making of an inventory, will make these items inadmissible in evidence.

We do not agree. Section 21 reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential

---

[34] *Id*.

[35] G.R. No. 175928, 31 August 2007, 531 SCRA 828.

chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[36]

In the case at bar, the records are unclouded that the integrity and the evidentiary value of the drug items seized from defendant-appellant during the buy-bust operation were properly preserved and safeguarded. The specimen was adequately marked, and then dispatched to the Crime Laboratory for the requisite Chemistry Report conducted by Forensic Chemist Engr. Leonard Jabonillo. What is even more telling is the fact that accused-appellant was not shown to have challenged the custody or the issue of disposition and preservation of the subject drug before the RTC. And neither did he raise objections before the Court of Appeals. Accused-appellant cannot be allowed too late in the day to question the integrity and evidentiary value of the seized items.[37] Thus, in *People v. Sta. Maria*,[38] this Court underscored the rule that objection to the admissibility of evidence raised for the first time on appeal cannot be considered:

---

[36] *Id.* at 841-843.

[37] *Arwood Industries, Inc. v. D.M. Consunji, Inc.*, 442 Phil. 203, 215 (2002).

[38] G.R. No. 171019, 23 February 2007, 516 SCRA 621.

Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[39]

As can be gleaned from the foregoing, the Court in *Pringas* alluded to Section 21(a)[40] of the Implementing Rules and Regulations of Republic Act No. 9165, declaring that non-compliance with the requirements under justifiable grounds shall not render void and invalid such seizures and custody of said items, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. In this case, it must be stressed that defendant-appellant even stipulated[41] that a qualitative examination made by the

---

[39] *Id.* at 633-634.

[40] Section 21 (a) of the Implementing Rules and Regulations of Republic Act No. 9165, provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph.

[41] Records, p. 39.

Philippine National Police Crime Laboratory, Central Police District Crime Laboratory Office on the subject specimen, which was sealed in a transparent plastic sachet marked with the initials of PO2 Ortiz, yielded positive for methylamphetamine hydrochloride, a dangerous drug.[42] The question, therefore, of the integrity and the evidentiary value of the items taken from the defendant-appellant has been laid to rest. Moreover, from the time the illegal drug was seized from the person of defendant-appellant until the time the chemical examination was conducted thereon, its integrity was preserved. It was not shown to have been contaminated in any manner. Its identity, quantity and quality remained untarnished, and was sufficiently established.

At this juncture, it is best to emphasize that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation;[43] under these circumstances, the Court relies on the rule that the weighing of evidence, particularly conflicts in the testimonies of witnesses, is best left to the discretion of the trial court, which had the best opportunity to observe their demeanor, conduct and manner while testifying.[44] Such an opportunity is denied to the appellate courts.[45] For this reason, the trial court's findings are accorded finality, unless there appears on the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[46] When this Court is asked to go over the evidence presented by the parties and to analyze, assess and weigh the same to ascertain if the trial court, as affirmed by the appellate court, was correct in according superior credit to this or that piece of evidence and, eventually, to the totality of the evidence of one party or

---

[42] *Id*. at 6.

[43] *People v. Chang*, 382 Phil. 669, 695 (2000).

[44] *Id*.; *People v. Belga*, 402 Phil. 734, 742-743 (2001); *People v. Natividad*, 405 Phil. 312, 329 (2001).

[45] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 345.

[46] *Id*.

the other, the Court will not do the same.[47] When the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon the Court.[48] In the instant case, we find no compelling reason to reverse the findings of the RTC, as affirmed by the Court of Appeals. We do so for the following critical points:

First, all the necessary elements for the prosecution of the illegal sale of drugs were established. The elements are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[49] It is beyond reasonable doubt that the transaction actually took place, as ruled by the trial court and affirmed by the appellate court. Prosecution witness PO2 Ortiz narrated that he was introduced by the informant to defendant-appellant as a buyer of *shabu*. PO2 Ortiz then told defendant-appellant that he was going to buy *shabu* worth ₱200.00. PO2 Ortiz was then handed a small plastic sachet containing the prohibited drug. After his receipt of the item, he handed defendant-appellant the money. PO2 Ortiz then gave the pre-arranged signal and introduced himself to defendant-appellant as a police officer. Following the pre-arranged signal, the rest of the team rushed to the scene. Thus:

FIS. ARAULA:

Q. What happened when you, together with your informant were able to see the subject of yours, what happened?

WITNESS:

The informant introduced me and said I was going to buy the *shabu*?

FIS. ARAULA:

Q. If that subject is in the courtroom can you identify that person?

---

[47] *Rendon v. People*, G.R. No. 127089, 19 November 2004, 443 SCRA 142, 147-148.

[48] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

[49] *People v. Montano*, 392 Phil. 378, 390-391 (2000); *People v. Santos*, 442 Phil. 316, 415 (2002); *People v. Adam*, 459 Phil. 676, 684 (2003).

WITNESS:

A. Yes, sir.

FIS. ARAULA:

Q. Will you please stand up and touch the shoulder of the accused, Mr. Witness?

WITNESS:

A. This one, your Honor.

INTERPRETER:

Witnessed tapped the shoulder of a person inside the courtroom when asked answered by the name of Jinggoy Mateo *y* Rodriguez.

FIS ARAULA:

Q. Now after your informant told Mateo, the accused in this case that you are interested in buying illegal drug what was the response of the accused in this case?

WITNESS:

A. I told him that I was going to buy *shabu* worth of Two Hundred Pesos, sir.

FIS. ARAULA:

Q. What was his answer?

WITNESS:

A. He said, "*Sige bibili ka*."

FIS. ARAULA:

Q. When he said "*Sige*" what did he do, if any?

WITNESS:

A. He gave me a small plastic sachet.

FIS. ARAULA:

Q. How about you, what did you give to him?

WITNESS:

A. I gave him the money after I received the sachet.

FIS. ARAULA:

Q. In other words, Mr. Witness you received first the illegal drug and gave the two hundred pesos to him?

WITNESS:

[A.] Yes, sir.

FIS. ARAULA:

Q. By the way was there any other person present at that time aside from the accused Jinggoy Mateo *y* Rodriguez and the informant with you?

WITNESS:

A. Only three (3) of us, sir.

FIS. ARAULA:

Q. When you gave that money to the accused Jinggoy Mateo, where the informant at that time?

WITNESS:

A. He was beside me, sir.

FIS. ARAULA:

Q. After giving the money and receiving the *shabu* from the accused in this case what happened next?

WITNESS:

A. I gave my pre-arranged signal.

FIS. ARAULA:

[Q.] What was the pre-arrange[d] signal?

WITNESS:

A. I light (sic) up a cigarette, sir.

FIS. ARAULA:

Q. What do you mean by lighting that cigarette?

WITNESS:

A. That I have bought *shabu*, sir.

FIS. ARAULA:

Q. Now after that what happened after you made the pre-arranged signal?

WITNESS:

A. I got hold [of] Jinggoy Mateo and introduced myself as [a] policeman.

FIS. ARAULA:

Q. What was the reaction of the accused when you got hold of him at that time?

WITNESS:

A. He was surprised.

FIS. ARAULA:

Q. How about the other police officer[s], where were they [?]

WITNESS:

A. They rushed [to] our place, sir.[50]

Indeed, there is no gainsaying that defendant-appellant was caught *in flagrante delicto*. He was positively identified. Defendant-appellant was the seller of the object seized from him, which item was later shown to be methylamphetamine hydrochloride, otherwise known as *shabu*. This fact was confirmed by Chemistry Report No. D-069-2003. This was further established in the Certification, dated 14 January 2003, issued by Forensic Analyst Engr. Leonard M. Jabonillo, declaring that he conducted Forensic Laboratory Examination on the specimen confiscated from defendant-appellant, which gave positive results for methylamphetamine hydrochloride. Finally, as aptly considered by the Court of Appeals, the identity of the prohibited drug, which constitutes the *corpus delicti*, was also shown by the Request for Laboratory Examination, dated 14 January 2003, from the District Drug Enforcement Group of Camp Karingal for "one (1) small heat-sealed transparent

[50] TSN, 9 March 2004, pp. 8-11.

plastic sachet containing a white crystalline substance suspected to be *shabu* with marking/s 'JO-JM-S.'"[51]

Second, the presumption that the public officers performed their duties regularly during the buy-bust operation was not overturned. Restated, the rule is that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly.[52] This presumption can be overturned if clear and convincing evidence is presented to prove either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[53] In this case, appellant failed to present said evidence.

The Court of Appeals was without error when it upheld the ruling of the RTC declaring valid the buy-bust operation conducted against defendant-appellant. Jurisprudence has established that a buy-bust operation is a form of entrapment,[54] in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[55]

The arresting officers were not shown not to have properly performed their duty. Neither was it established that they had been impelled by any improper motive. We are in accord with the Court of Appeals that nowhere was it shown or even imputed that the arrest of defendant-appellant was made in an effort to extort from him.

Section 5, Article II of Republic Act No. 9165 penalizes the sale of *shabu*, to wit:

---

[51] Exhibit A, Records, p. 5.

[52] *People v. Padasin*, 445 Phil. 448, 455-456 (2003).

[53] *Id.* at 456.

[54] *People v. Ong*, G.R. No. 137348, 21 June 2004, 432 SCRA 470, 484.

[55] *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

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.

For selling 0.20 gram of methylamphetamine hydrochloride to PO2 Ortiz, we find that the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment. We also find the fine of ₱500,000.00 imposed on defendant-appellant to be in accordance with law.

WHEREFORE, the instant Appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01290, dated 15 February 2007, sustaining the conviction of defendant-appellant Jinggoy Mateo *y* Rodriquez, for violation of Section 5, Article II of Republic Act No. 9165 is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

[*] Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 25 June 2008.

SECOND DIVISION

[G.R. No. 180448. July 28, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BUDOY GONZALES *y* LACDANG,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ARSON; *CORPUS DELICTI,* EXPLAINED. — Proof of the *corpus delicti* is indispensable in the prosecution of arson, as in all kinds of criminal offenses. *Corpus delicti* means the substance of the crime; it is the fact that a crime has actually been committed. In arson, the *corpus delicti* rule is generally satisfied by proof of the bare occurrence of the fire, *e.g.*, the charred remains of a house burned down and of its having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the *corpus delicti* and to warrant conviction.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS AND ASSESSMENT MADE BY THE TRIAL COURT REMAIN BINDING ON THE APPELLATE TRIBUNAL. — [O]n matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal.

3. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL IDENTIFICATION OF APPELLANT; ALIBI, WHEN TO PROSPER. — Absent any showing of ill motive on the part of Salvacion to falsely testify against appellant, her categorical and positive identification of appellant prevails over alibi and denial. Moreover, for alibi to prosper, appellant must establish by clear and convincing evidence his presence at another place at the time of the perpetration of the offense and the physical impossibility of

his presence at the scene of the crime. Appellant claims that he was at home at the time the crime was committed. It was not physically impossible for him, however, to go to the house of Salvacion and perpetrate the crime as his own house is only a few meters away as proven by the records.

4. ID.; ID.; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES WHICH REFER TO TRIVIAL AND INSIGNIFICANT DETAILS DO NOT DESTROY THEIR CREDIBILITY. — Salvacion may have been confused during the direct and cross-examination but the discrepancies in her testimony do not relate directly to the crime charged. As a rule, inconsistencies in the testimonies of witnesses which refer to trivial and insignificant details do not destroy their credibility. Minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase suspicion that the testimonies have been rehearsed, thereby negating any misgivings that the same were perjured.

5. ID.; ID.; PRESENTATION OF EVIDENCE; PHOTOGRAPHS, HOW PRESENTED IN EVIDENCE. — The photographs presented by the defense to prove that Salvacion's house was not burned, were correctly disregarded by the lower courts as having no probative value. Indeed, photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced. While appellant claimed that the photographs were taken after the alleged fire, he could not completely identify the person who had taken them. Neither did he even claim that he was present when the photographs were shot.

6. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO SEEK RECOVERY OF ACTUAL DAMAGES, IT IS NECESSARY TO PROVE ACTUAL AMOUNT OF LOSS WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE. — To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable. Aside from bare allegations, no receipts were presented to prove the actual losses suffered, hence such actual damages cannot be awarded.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Before us is an appeal from the Decision[1] dated 31 July 2007 of the Court of Appeals,[2] which affirmed with modification the judgment[3] of the Regional Trial Court (RTC) of Sorsogon, Sorsogon, Branch 53,[4] finding appellant Budoy Gonzales *y* Lacdang guilty of arson.

On 4 March 1997, an information for arson was filed against appellant.[5] Two (2) days later, the information was amended to specify the charge as destructive arson under Article 320, Section 10, as amended by Presidential Decree No. 1613 and Republic Act No. 7659 committed as follow:

> That on or about October 4, 1996, at Barangay Piot, Municipality of Sorsogon, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, willfully, unlawfully and feloniously did then and there burn the building/residential house of Salvacion Salvacion by setting fire on the anahaw roof of said house which was then inhabited, the same being used as the dwelling cum store and boarding house of said private offended party, her family and her boarders, and being then situated in a populated and congested area, which destruction caused damage amounting to ₱50,000.00 to the prejudice of the private offended party.
>
> CONTRARY TO LAW.[6]

[1] *Rollo*, pp. 3-16.

[2] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] CA *rollo*, pp. 15-19.

[4] Presided by Acting Judge Honesto A. Villamor.

[5] Records, p. 28.

[6] CA *rollo*, p. 8.

Trial commenced following appellant's entry of a "not guilty" plea.

The prosecution presented Salvacion Loresto (Salvacion), private complainant and lone eyewitness, to give her account of the events that transpired on 4 October 1996. She lives with her family in a house a part of which is being rented out to boarders, and owns a store located in the same house. She narrated that on 3 October 1996, at around 1:15 p.m., appellant went to her store and threatened her with the following words: "[If] You did not stop reporting to the police, I am going to kill you and set your house on fire."[7] The threats purportedly stemmed from a suspicion that Salvacion was the one reporting the *jueteng* operations in the area. Appellant apparently works for the suspected *jueteng* operator. After she was threatened, Salvacion sought assistance from the police. Captain Clet and two other policemen were dispatched to Salvacion's house to monitor the activities of appellant. At around 8:00 p.m., one of the policemen ordered Salvacion to close her store because appellant was then at a drinking session few houses away.[8]

At 3:30 the following morning, Salvacion saw appellant emerge from the house where the latter was last seen drinking. She then saw him cross the street and proceed to her house. She claimed that appellant picked something up which he then wrapped inside an *anahaw* palm, left it by the corner of her store and set her house on fire. She immediately woke the occupants of the house and shouted for help. At that time, the policemen, who were positioned five (5) meters away from the house, ran after appellant[9] while the house was totally being razed by fire. The damage was estimated at ₱50,000.00.[10]

The other witness for the prosecution was PO3 Edgardo Balaoro (PO3 Balaoro), representing the chief of police, who brought

---

[7] TSN, 14 July 1997, pp. 3-4.

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

[9] *Id*. at 6.

[10] *Id*. at 7.

the police blotter to the court. The blotter, however, was not formally offered in evidence.

In his defense, appellant denied having burned the house of Salvacion and having delivered threats against the latter. He accused Salvacion of holding a grudge against him because she suspected him of hurling stones at her house. He also presented pictures to show that Salvacion's house was not burned.[11]

After trial, appellant was found guilty by the trial court of arson in a decision dated 28 February 2001, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds accused Budoy Gonzales *y* Lacdang *alias* Manuel Jebulan guilty beyond reasonable doubt of the crime of Arson, defined and penalized under Article 320 of the Revised Penal Code as amended by Sec. 2 of P.D. No. 1613 and further amended by Sec. 10(1) of R.A. No. 7659, and there is no aggravating neither mitigating circumstance attendant thereto, accused is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the sum of ₱50,000.00 as damages without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> Since the accused has been previously detained before he was bonded, his previous detention shall be taken in full in the service of his sentence.
>
> SO ORDERED.[12]

The trial court gave full credence to the testimony of Salvacion on the grounds that it was corroborated by the police blotter and that there was no showing of any motive on her part to falsely testify against appellant.

In view of the penalty imposed, the case was elevated to this Court for review. However, conformably with our decision in *People v. Mateo*,[13] the case was transferred to the Court of Appeals for appropriate action and disposition.[14]

---

[11] TSN, 30 May 2000, pp. 4-5.

[12] CA *rollo*, p. 19.

[13] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[14] *Rollo*, p. 2.

The appellate court affirmed the factual findings of the trial court and held that the prosecution's lone witness was positive and direct in identifying appellant as the assailant and in narrating the circumstances surrounding the case.[15] The appellate court also did not give weight to the pictures presented by the defense to prove that the house of Salvacion was not burned. It explained that there was no proof off when the pictures were taken. Neither was the person who took the picture presented as witness.[16] The appellate court however deleted the award of actual damages for failure of the prosecution to prove the actual amount of loss.[17]

On 13 February 2008, this Court resolved to accept the present case and to require the parties to simultaneously submit their respective supplemental briefs. Appellant and the Office of the Solicitor General both filed their manifestations stating that they would no longer file any supplemental briefs and instead adopt their respective briefs.[18]

Appellant argues that the trial court should not have completely disregarded his defense of alibi and denial considering that he was able to prove that Salvacion's house was not burned by the photographs he presented during the trial. Moreover, the conflicting testimonies of Salvacion relating to the fire weakened the case for the prosecution as they were not corroborated by any witness.[19]

Essentially, appellant maintains that his guilt has not been proven beyond reasonable doubt.

The Office of the Solicitor General, avers that the evidence established the *corpus delicti* as well as the identity of the perpetrator, *i.e.*, that a fire gutted the house of Salvacion and that it was intentionally set on fire by appellant.[20]

---

[15] *Id.* at 9.

[16] *Id.* at 14.

[17] *Id.* at 15.

[18] *Rollo*, pp. 23-24, 27.

[19] CA *rollo*, p. 47.

[20] *Id.* at 85.

Proof of the *corpus delicti* is indispensable in the prosecution of arson, as in all kinds of criminal offenses. *Corpus delicti* means the substance of the crime; it is the fact that a crime has actually been committed. In arson, the *corpus delicti* rule is generally satisfied by proof of the bare occurrence of the fire, *e.g.*, the charred remains of a house burned down and of its having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the *corpus delicti* and to warrant conviction. [21]

In the instant case, the trial court found the testimony of Salvacion worthy of credence, thus:

> Resultantly guided by the jurisprudence laid down by the Supreme Court in many cases including the above-mentioned cases, this Court is inclined to give credence and weight to the testimony of the private offended party, Salvacion Loresto that she saw the accused that early morning of October 4, 1996 crossed the street and went near their house and got something and placed it inside the anahaw palm and set their house on fire. Thereafter, she woke up the occupants of the house and her neighbors and shouted for assistance. The two policemen detailed in her house that night ran after the accused and he was apprehended and brought to the police station.[22]

Worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal.[23]

Appellant has utterly failed to convince this Court to depart from the rule stated above. Indeed, the testimony of Salvacion

---

[21] *People v. Gutierrez*, 327 Phil. 679, 685 (1996).

[22] CA *rollo*, p. 18.

[23] *Bricenio v. People*, G.R. No. 157804, 20 June 2006, 491 SCRA 489, 496.

that she saw appellant set her house on fire is positive and categorical. She testified in a straightforward manner:

Q: Madam witness, on October 4, 1996 at around 3:30 o'clock in the morning, do you remember where you were?
A Yes, sir. I was in my house.

Q What were you doing then?
A I was guarding the accused, because he had already threatened me to commit the said crime.

Q You said you were threatened by the accused, where were you threatened by the accused?
A October 3, 1996 at around 1:15 in the afternoon.

Q Where were you when the accused threatened you?
A I was then inside my house taking my meal.

Q How did the accused threaten you?
A He went to the store and uttered to me in this manner "You did not stop in reporting to the police, I am going to kill you and set your house on fire."

Q Do you want to say that the accused personally talked to you?
A Yes, sir.

Q Now, if the accused is around in this court room, can you point to him to us?
A He is there.

INTERPRETER:

Q Witness pointed to a man in court seated in the front row, wearing a red T-shirt who identified himself as Manuel Jebulan.

x x x x x x x x x

Q At around 3:30 in the morning of October 4, 1996, do you remember of an unusual incident that happened?
A Yes, sir. There was.

Q What was that incident?
A At around 3:30 I had seen the accused emerged from the place where they were having their drinking session, and the policemen were just five (5) meters from my store.

Q Where were you when you saw the accused?
A I was just at the corner of our house observing whatever action he will do.

Q When you saw the accused went out from the place where he has a drinking spree with his companions, what happened?
A While observing him he crossed the street went near our house and he got something and placed it inside our Anahaw palm, and set our house on fire.

Q In what particular part of your house did he put that in your house?
A At the corner of our store. The store and our house is under one roof.

Q After the accused set your house on fire, what did you do?
A At that time I already woke up the occupants of our house and also our neighbors I shouted to them to lend assistance.

Q You said that there were two policemen, what did the two policemen do?
A The two policemen ran after the accused who had fled and he was caught also.[24]

Absent any showing of ill motive on the part of Salvacion to falsely testify against appellant, her categorical and positive identification of appellant prevails over alibi and denial.[25] Moreover, for alibi to prosper, appellant must establish by clear and convincing evidence his presence at another place at the time of the perpetration of the offense and the physical impossibility of his presence at the scene of the crime.[26] Appellant claims that he was at home at the time the crime was committed. It was not physically impossible for him, however, to go to the house of Salvacion and perpetrate the crime as his own house is only a few meters away as proven by the records.

Appellant harps on the inconsistencies in Salvacion's testimony. Appellant asserts that Salvacion initially claimed that her house

[24] TSN, 14 July 1997, pp. 3-6.

[25] *People v. Corpus*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 449.

[26] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 116.

was totally burned[27] only to retract later and concede that only half of the house was burned.[28] The point of appellant's contention dwells merely on the extent of burning, not on the occurrence of the fire itself. Therefore, there is no dispute that the fire really occurred. Appellant also points out to the supposed inconsistency in the manner by which the fire was extinguished. Salvacion may have been confused during the direct and cross-examination but the discrepancies in her testimony do not relate directly to the crime charged. As a rule, inconsistencies in the testimonies of witnesses which refer to trivial and insignificant details do not destroy their credibility. Minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase suspicion that the testimonies have been rehearsed, thereby negating any misgivings that the same were perjured.[29]

The photographs presented by the defense to prove that Salvacion's house was not burned, were correctly disregarded by the lower courts as having no probative value. Indeed, photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced.[30] While appellant claimed that the photographs were taken after the alleged fire, he could not completely identify the person who had taken them. Neither did he even claim that he was present when the photographs were shot.

Appellant was found liable under Article 320(1) of the Revised Penal Code, as amended by Section 10 of R.A. No. 7659, which provides as follows:

Art. 320. *Destructive Arson*. —The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

---

[27] TSN, 14 July 1997, p. 7; 9 February 1999, p. 7.

[28] TSN, 9 February 1999, p. 7.

[29] *Salvador v. People*, 463 SCRA 489, 502.

[30] *Sison v. People*, 320 Phil. 112, 131 (1995).

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions.

x x x x x x x x x

The lower courts correctly imposed the penalty of *reclusion perpetua*. Furthermore, we sustain the deletion of the award of actual damages by the appellate court. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[31] Aside from bare allegations, no receipts were presented to prove the actual losses suffered, hence such actual damages cannot be awarded.

WHEREFORE, the appealed decision finding appellant Budoy Gonzales *y* Lacdang guilty beyond reasonable doubt of the crime of arson and sentencing him to *reclusion perpetua* is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180511. July 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARILYN NAQUITA *y* CIBULO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF AN INFORMANT IS NOT A REQUISITE IN THE PROSECUTION

[31] *People v. Pansensooy*, 437 Phil. 499, 523 (2002).

OF DRUG CASES; EXCEPTIONS. — The presentation of an informant is not a requisite in the prosecution of drug cases. The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensable to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that a buy-bust operation has indeed been conducted. Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; FAILURE OF POLICE OPERATIVES TO COMPLY WITH SECTIONS 21 AND 86 THEREOF WILL NEITHER RENDER THE ARREST ILLEGAL NOR EVIDENCE SEIZED INADMISSIBLE. — The failure of the police operatives to comply with Section 86 will neither render her arrest illegal nor the evidence seized from her inadmissible. In *People v. Sta. Maria,* we have ruled on the same issue as follows: Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence, both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest. The argument is specious. x x x Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way

that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible. As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. x x x. Neither would non-compliance with Section 21 render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

3. ID.; ID.; ILLEGAL SALE OF DRUGS; ELEMENTS NECESSARY FOR PROSECUTION THEREOF. — The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or

object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; IN BUY-BUST OPERATION, THERE IS A DISPUTABLE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES BY LAW ENFORCERS. — In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit. In the instant case, appellant miserably failed to show that the members of the buy-bust team were impelled by any improper motive or that they did not properly perform their duty. This being the case, we uphold the presumption of regularity in the performance of official duties. The law disputably presumes that official duty has been regularly performed. The presumption was not overcome, there being no evidence showing that PO1 Cosme, PO1 Llanderal and the rest of the team were impelled by improper motive. In fact, appellant admitted that prior to the incident, she did not know PO1 Cosme, PO1 Llanderal and the rest of the buy-bust team.

6. ID.; ID.; CREDIBILITY OF WITNESSES; AGAINST THE POSITIVE TESTIMONIES OF PROSECUTION WITNESSES, APPELLANT'S PLAIN DENIAL OF THE OFFENSES CHARGED, UNSUBSTANTIATED BY ANY CREDIBLE AND CONVINCING EVIDENCE, MUST SIMPLY FAIL. — Having been caught *in flagrante*, appellant's identity as seller and possessor of the *shabu* can no longer be disputed. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail. Frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs

Act. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF DANGEROUS DRUGS; IMPOSABLE PENALTY; CASE AT BAR. — Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused. With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. Thus, the penalty to be imposed on appellant shall only be life imprisonment and fine.

8. ID.; ID.; POSSESSION OF DANGEROUS DRUGS; PENALTY; RULE. — As regards possession of dangerous drugs, the same is punished under Section 11, Article II of Republic Act No. 9165. Paragraph 2, No. 3 thereof, reads: (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 x x x methamphetamine hydrochloride x x x.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01344 dated 29 December 2006 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Criminal Cases Nos. C-69156 and C-69157, finding accused-appellant Marilyn C. Naquita guilty of violation of Sections 5[3] and 11,[4] Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 19 September 2003, appellant was charged in two informations with Violation of Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations reads:

Crim. Case No. C-69156

That on or about the 17th day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 JOEL C. COSME, who posed as poseur buyer, one (1) heat sealed transparent plastic sachet containing 2.05 grams, knowing the same to be a dangerous drug.[5]

Crim. Case No. C-69157

That on or about the 17th day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this

---

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok, concurring; CA *rollo*, pp. 129-146.

[2] Records, pp. 138-151.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Possession of Dangerous Drugs.

[5] Records, p. 1.

Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously have in her possession, custody and control two (2) pcs. of transparent plastic sachets containing Methylamphetamine Hydrochloride with a total weight of 3.90 grams, knowing the same to be a dangerous drug.[6]

When arraigned on 2 October 2003, appellant, with the assistance of counsel *de oficio*, pleaded "Not guilty" to the crimes charged.

In the pre-trial conference conducted on 18 November 2003, counsel for appellant admitted the jurisdiction of the trial court and the identity of the appellant as the person named and charged in the informations filed. With the termination of the pre-trial conference, joint trial of the cases ensued.

The following witnesses took the stand for the prosecution: (1) Police Officer 1 (PO1) Joel Cosme[7] and (2) PO1 Randy Llanderal,[8] both police officers assigned at the District Anti-Illegal Drugs Special Operations Group (DAID-SOG), Northern Police District Command, Tanigue St., Kaunlaran Village, Caloocan City.

From the collective testimonies of the witnesses, the version of the prosecution is as follows:

On 17 September 2003, at around 3:00 o'clock in the afternoon, a confidential informant went to the office of the DAID-SOG, Northern Police District Command in Caloocan City and reported to PO3 Joel Borda that one *alias* Inday (appellant) was selling *shabu* at Binangonan, Maypajo, Caloocan City. The information was relayed to Police Chief Inspector (P/Chief Insp.) Rafael Santiago, Jr. who then instructed PO3 Borda to organize a team and to conduct surveillance for a possible buy-bust operation. A buy-bust team was formed which was composed of PO3 Borda as team leader; PO1 Joel Cosme as the poseur-buyer;

---

[6] *Id*. at 10.

[7] TSN, 14, 15 and 21 January 2004.

[8] TSN, 4 February 2004.

and PO2 Mananghaya, PO2 Amoyo, PO2 Lagmay, PO2 Velasco, PO2 Dela Cruz, PO1 Reyes and PO1 Randy Llanderal as members. The buy-bust money, which consisted of six ₱500.00 bills,[9] was given by P/Chief Insp. Santiago to PO1 Cosme who placed his initials[10] thereon. The serial numbers of the buy-bust money were then recorded by the desk officer on duty. During the briefing, it was agreed upon that the pre-arranged signal to be made by the poseur-buyer, signifying that the *shabu* had been bought from *alias* Inday, was the scratching of the left ear.

At around 4:00 p.m., the team, together with the confidential informant, proceeded to Maypajo, Caloocan City. Arriving thereat at around 4:30 p.m., the team conducted a surveillance of Binangonan Street. At around 8:00 p.m., team leader PO3 Borda decided to start the buy-bust operation against appellant. The confidential informant and PO1 Cosme approached the appellant who was standing along Binangonan Street. PO1 Llanderal was about five meters away, while the rest of the team members stayed at the van. The confidential informant introduced PO1 Cosme to appellant as someone who was looking for a person who was selling *shabu*. Appellant asked PO1 Cosme how much he intended to buy. The latter answered, "*KALAHATING BULTO. HALAGANG TATLONG LIBO*." PO1 Cosme gave the money to appellant who, in turn, took out plastic sachets from her pocket and gave one to PO1 Cosme. Appellant returned the other plastic sachets to her pocket. After receiving the plastic sachet, PO1 Cosme examined the same and, as a pre-arranged signal, scratched his left ear. Noticing that PO1 Llanderal was already near, PO1 Cosme held appellant and introduced himself as a police officer. He retrieved the buy-bust money which appellant was still holding. PO1 Llanderal arrived from behind appellant and ordered her to empty her pockets. PO1 Llanderal recovered two plastic sachets.

With the arrest of appellant, the team immediately returned to their office. The marked money used and the three plastic

[9] Exhs. E to J.

[10] Exhs. E-1 to J-1.

sachets allegedly containing *shabu* were turned over to PO1 Ariosto Rana, the investigator of the case. The plastic sachet[11] sold to PO1 Cosme was marked "JCC," while the two plastic sachets[12] recovered by PO1 Llanderal were marked "RML-1" and "RML-2," respectively. It was in their office that the police officers came to know the complete name of appellant.

The white crystalline substance in the three plastic sachets recovered from appellant were forwarded to the Philippine National Police Crime Laboratory, Northern Police District Crime Laboratory Office, Caloocan City, for laboratory examination to determine the presence of any dangerous drug. The request for laboratory examination was signed by P/Chief Insp. Rafael Santiago, Jr.[13] Per Physical Sciences Report No. D-1217-03, the specimens[14] submitted contain methylamphetamine hydrochloride, a dangerous drug.

The testimony of Police Inspector Jesse Abadilla dela Rosa, Forensic Chemical Officer who examined the specimens recovered from appellant, was dispensed with, after counsel for the appellant admitted that the witness was an expert witness and that, upon request by police officers, he conducted qualitative examination on the specimens. His findings are contained in Physical Sciences Report No. D-1217-03.[15] Counsel for the appellant also admitted that PO2 Ariosto Rana was the investigator in the case, that it was he who prepared the Referral Letter addressed to the City Prosecutor, the Affidavit of Arrest and the Request for Laboratory Examination; and that he could identify the appellant and the specimens marked. With said admission, the testimony of PO2 Rana was likewise dispensed with.[16]

---

[11] Exh. D-4.

[12] Exhs. D-5 and D-6.

[13] Exh. C, Records, p. 70.

[14] A ("JCC") – 2.05 grams
B ("RML-1") – 1.84 grams
C ("RML-2") – 2.06 grams

[15] Records, p. 44.

[16] TSN, 26 February 2004, p. 3.

For the defense, Reynaldo Reyes,[17] Antonio San Pedro,[18] Maricris Manoles[19] and the appellant[20] took the witness stand.

Reynaldo Reyes, *barangay kagawad* and resident of 199 Pateros St., Maypajo, Caloocan City, testified that at around 6:00 p.m. of 17 September 2003, while he was on duty at the *barangay* hall located at Binangonan St., Maypajo, Caloocan City, Antonio San Pedro arrived and asked for assistance. At that time, he was with *barangay tanods* Abdul Mina and Dolly Evangelista. They responded and proceeded to the house of *Aling* Inday (appellant) at Bagong Sibol. Arriving thereat at around 7:00 p.m., he saw more or less ten policemen. The policemen who were inside appellant's house searched the ground floor and the second floor. He asked two policemen who were outside what the problem was. He was told that appellant was a dealer of *shabu*.

Reyes narrated that appellant was with her daughter and a little girl inside the house. He added that when he asked the policemen if they had a search warrant to search the house, he was told that the *barangay* hall knew of the operation. When appellant was arrested, he said the policemen showed them the *shabu* contained in a plastic sachet which weighed more or less half a kilo. Thereafter, the policemen brought the appellant with them.

Reyes disclosed that he executed a *Pinagsamang Sinumpaang Salaysay*[21] on 21 September 2003 which he subscribed before the Assistant City Prosecutor of Caloocan City on 26 September 2003.

Antonio San Pedro, tricycle driver and resident of 103 Binangonan St., Maypajo, Caloocan City recounted that at about 5:30 p.m. of 17 September 2003, he was in Benitez Elementary

---

[17] TSN, 10 March 2004.

[18] TSN, 14 April 2004.

[19] TSN, 20 April 2004.

[20] TSN, 27 April 2004.

[21] Exh. 4, Records, pp. 125-126.

School at Gagalangin, Tondo, Manila waiting for Angela Naquita, the niece of appellant, whom he was going to fetch. He fetched Angela and they proceeded to her house in Bagong Sibol, Caloocan City. They arrived at the house at around 6:30 p.m., and appellant, who was then washing clothes, opened the gate. After Angela entered the gate and after appellant gave her ₱100.00, a group of policemen, numbering more or less ten, suddenly entered the gate. Appellant closed the gate and the policemen entered the house. Some of the policemen went upstairs while the others held the appellant, forcing her to sit down. Appellant shouted, *"BAKIT NINYO AKO HUHULIHIN? BAKIT KAYO NAGSIPASOK SA BAHAY? SINO BA KAYO?"* San Pedro looked inside the house and saw appellant resisting. When appellant saw him, appellant asked him to seek assistance from the *barangay*. He went to the *barangay* hall at Binangonan Street where he saw Kagawad Reyes, Abdul Mina and Danny Evangelista. He asked for help and told them to go to the house of appellant. They proceeded to the house and arrived around 7:00 p.m. They introduced themselves as *barangay* officials and were allowed to enter the house. Aside from appellant, Angela Naquita and Maricris Naquita were also in the house when the policemen entered.

Mr. San Pedro testified that he executed a *Sinumpaang Salaysay*[22] dated 19 September 2003 which he subscribed before the Assistant City Prosecutor on 26 September 2003.

Next to testify for the defense was Maricris Manoles,[23] student and daughter of the appellant. She testified that on 17 September 2003, she was in school at the Centro Escolar University by 7:00 a.m. By 3:00 p.m., she was already in her house at 67 Binangonan St., Maypajo, Caloocan City. It was her mother, the appellant, who was sleeping when she arrived, who opened the gate for her. Thereafter, her mother did the laundry. After changing clothes, Maricris bought *merienda* and ate the same in her house with her boyfriend. By 5:00 p.m. her boyfriend

---

[22] Exh. 5; Records, pp 127-128.

[23] Also known as Maricris Naquita.

left and she then watched television. While watching television, her ten-year-old niece, Angela Naquita, arrived riding a tricycle. When appellant opened the gate, more or less nine policemen also entered their residence. Appellant was surprised and became hysterical. Both Maricris and her mother were crying. The policemen proceeded upstairs to appellant's room and searched the same. Appellant sat in the sofa and was prevented from going upstairs. Maricris was able to go upstairs after she was instructed by appellant to check the latter's money that was kept there. After around thirty minutes, three *barangay* officials arrived and were able to enter the house. However, after a while, the policemen told the three to leave. At past 7:00 p.m., appellant was taken by the policemen to Larangay Police Station in Caloocan City. The policemen, as well as appellant, did not allow Maricris to go with them. Maricris informed her friends and relatives about the incident. She took pictures[24] of appellant's room and their gate. She added that when she proceeded to the police station, a police officer demanded ₱200,000.00 for the release of appellant.

Maricris executed a sworn statement[25] dated 6 October 2003 which she subscribed before the Assistant City Prosecutor of Caloocan City on 24 October 2003. She alleged therein that the police officers took several pieces of jewelry, a Nokia cell phone and ₱72,000.00. The sworn statement, she said, will be used for cases filed by appellant.

Appellant testified for her defense. She testified that she was separated, a businesswoman engaged in buy and sell, and a resident of 67 Bagong Sibol St., Maypajo, Caloocan City.

Appellant narrated that at around 6:30 p.m. of 17 September 2003, she was in her house washing clothes. Her daughter, Maricris, was inside watching television. While doing the laundry, her niece, Angela, arrived and called her and told her that the tricycle driver, Antonio San Pedro, wanted to get a ₱100.00 *vale*. After her niece entered the gate, she was surprised that

---

[24] Exhs. 7 to 7-E.

[25] Exh. 6; Records, pp. 129-130.

nine to ten persons entered the gate. It was the first time she saw these persons who were in civilian clothes and were armed with a long firearm. Appellant tried to prevent them from entering the house but to no avail. Seeing that five to six men went upstairs, she told Mr. San Pedro to call *barangay* officials. She had no idea what the armed men did but she asked her daughter to go upstairs because her money was in the second floor. Her daughter informed her that her cell phone worth ₱15,000.00, several pieces of jewelry worth ₱15,000.00, and cash amounting to ₱72,000.00 were missing from her room.

Barangay officials arrived and she asked them to go inside but they were prevented by these men. It was at this moment that the armed men introduced themselves as policemen to the *barangay* officials. After searching her residence and taking several of her belongings, the policemen brought her to Larangay Police Station. At the police station, appellant was informed that she was being charged with violation of Section 5 of Republic Act No. 9165. A certain Gilbert Velasco told her that if she did not give money, she could not go home. Another police officer named Toto, she claimed, also talked to her and relayed the same message. She alleged that the policemen told her that someone pointed to her as one involved in drugs. Appellant denied that she was peddling *shabu* at 8:00 p.m. of 17 September 2003 when she was arrested by policemen.

Appellant revealed that she executed a *Sinumpaang Salaysay*[26] dated 6 October 2003, and filed cases of robbery, illegal arrest and violation of Section 29 of Republic Act No. 9165 against the policemen named therein. She added that prior to the incident, she did not know PO1 Joel Cosme, PO1 Llanderal, and the members of the DAID-SOG.

The testimony of Abdul Mina, member of the *Lupong Tagapamayapa*, was dispensed with after the public prosecutor admitted that said witness would corroborate the testimony Reynaldo Reyes.[27]

---

[26] Exh. 8; Records, pp. 131-132.

[27] TSN, 10 March 2004, p. 23.

On 28 June 2005, the trial court rendered its decision convicting appellant of violation of Sections 5 and 11 of Republic Act No. 9165. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the Court finds and so holds that accused MARILYN NAQUITA *y* CIBULO is GUILTY beyond reasonable doubt [of] Violation of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon her the following:
>
> 1. In Criminal Case No. C-69156 for Violation of Section 5, Article II, the penalty of LIFE IMPRISONMENT and a fine of ₱500,000.00; and
>
> 2. In Criminal Case No. C-69157 for Violation of Section 11, Article II, the penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years and a fine of ₱300,000.00.
>
> The three (3) pieces of heat-sealed transparent plastic sachets each containing 2.05 gram(s) ("JCC"), 1.84 gram(s) ("RML-1") and 2.05 gram(s) ("RML-2") of Methylamphetamine Hydrochloride are hereby ordered confiscated in favor of the government to be turned over [to] the Philippine Drug Enforcement Agency for proper disposition.[28]

The trial court convicted appellant for selling and possessing dangerous drugs on the strength of the testimonies of PO1 Cosme and PO1 Llanderal as well as the Physical Sciences Report adduced in evidence by the prosecution. It did not give weight to appellant's claims of frame-up and extortion. It further appreciated in favor of the police officers the presumption of regularity in the performance of official duty when accused admitted that she did not know any of the operatives who took part in the buy-bust operation and that the policemen had no motive for falsely imputing to her a serious crime.

On 11 July 2005, appellant filed a Notice of Appeal.[29] With the filing thereof, the trial court ordered the elevation of the entire records of the case to the Court of Appeals.[30]

---

[28] Records, p. 151.

[29] *Id.* at 157.

[30] *Id.* at 159.

On 29 December 2006, the Court of Appeals dismissed appellant's appeal and affirmed her conviction for the crimes charged. It, however, modified the penalty imposed in Criminal Case No. C-69157. The dispositive portion of the decision reads:

> WHEREFORE, in the light of the foregoing, the appeal is DISMISSED for lack of merit. The assailed decision is AFFIRMED with the MODIFICATION that the accused-appellant in Criminal Case No. C-69157 is sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> Costs against the accused-appellant.[31]

Appellant filed a Motion for Reconsideration[32] of the Court of Appeals decision which the appellate court denied in its Resolution dated 18 April 2007.[33] Appellant filed a Notice of Appeal notifying the Court of Appeals of her intention to appeal her conviction before the Supreme Court.[34]

In our Resolution[35] dated 28 January 2008, this Court accepted appellant's appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both partied opted not to file a supplemental brief on the ground they had exhaustively argued all the relevant issues in their respective briefs, and the filing of a supplemental brief would only contain a repetition of the arguments already discussed therein.[36]

Appellant tasks this Court with the following assignment of errors:

1. The Court *a quo* gravely erred in completely disregarding the defense' factual version and upholding the presumption

---

[31] CA *rollo*, pp. 145-146.

[32] *Id.* at 147-163.

[33] *Id.* at 194-195.

[34] *Id.* at 198.

[35] *Rollo*, p. 23.

[36] *Id.* at 25-27.

of regularity of performance of official duties despite the accused-appellant's version supported by disinterested witnesses and *Barangay* officials.

2. The Court *a quo* gravely erred in finding accused-appellant guilty beyond reasonable doubt of violation of Section 5 and 11, Article II of Republic Act 9165 based on the weakness of the defense evidence and not on the strength of prosecution's evidence.[37]

Appellant assails her conviction primarily on the ground that the trial court gave more credence to the testimonies of the police officers who took part in the buy-bust operation than the testimonies of the defense witnesses. She claims that the defense witnesses are more credible than the self-serving allegations of the police officers. She faults the police officers for not naming the informant who revealed to them that she was a drug peddler. Appellant adds that the trial court should not have relied mainly on the weakness of the defense; rather, it should have relied on the strength of the prosecution's evidence. She maintains that the buy-bust operation suffers from severe factual and legal infirmity because of lack of a Pre-Operation and Coordination Report prior to the actual drug operation; and that the police officers violated Section 21 of Republic Act No. 9165, because the buy-bust team failed to conduct a physical inventory of the drugs seized and to photograph the same in the presence of the people mentioned in said section.

Appellant insists there was no buy-bust operation conducted at 8:00 p.m. of 17 September 2003 in Binangonan St., Maypajo, Caloocan City where she was allegedly caught *in flagrante* selling and possessing dangerous drugs. According to her, the policemen, without any valid search warrant, conducted a raid and took valuable items from her house located at 67 Bagong Sibol St., Maypajo, Caloocan City at around 6:30 to 7:00 p.m. of 17 September 2003, and subsequently arrested her for supposedly being involved in drugs.

The issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a

[37] CA *rollo*, p. 55.

prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies.[38] When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[39] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[40]

After examining the records on hand, we find no reason to overrule the findings of the trial court as affirmed by the Court of Appeals.

Appellant insists that the testimonies of her "independent" witnesses — Reynaldo Reyes, Antonio San Pedro and Maricris Manoles — should be given more weight than the testimonies of the prosecution witnesses.

We do not agree. Maricris Manoles is appellant's daughter, while Antonio San Pedro is her friend serving as the tricycle service of her niece, Angela Naquita. Their testimonies are necessarily suspect, considering they are appellant's close relative and friend.[41] As to Barangay Kagawad Reynaldo Reyes and Antonio San Pedro, we find them unreliable. Their declarations were not in accord with each other on the question of whether or not the *barangay* officials were allowed inside the house of appellant when the policemen supposedly violated its sanctity. Reyes said he and two other *barangay* officials were not allowed

---

[38] *People v. Evangelista*, G.R. No. 175281, 27 September 2007, 534 SCRA 241, 250.

[39] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[40] *People v. Arivan*, G.R. No. 176065, 22 April 2008.

[41] *People v. Opeliña*, 458 Phil. 1001, 1014 (2003).

inside appellant's house.[42] Said statement was confirmed by appellant[43] but was contradicted by San Pedro.[44]

Appellant argues that the policemen's allegations are sham and false, purposely made to cover up their criminal acts. She adds that they could not even name the informant who allegedly revealed to them that she was a drug peddler.

The presentation of an informant is not a requisite in the prosecution of drug cases.[45] The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensable to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug.[46] Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that a buy-bust operation has indeed been conducted.[47] Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.[48]

---

[42] Records, p. 125.

[43] TSN, 27 April 2004, p. 7.

[44] TSN, 14 April 2004, p. 8.

[45] *People v. Cheng Ho Chua*, 364 Phil. 497, 513 (1999).

[46] *People v. Evangelista*, *supra* note 38.

[47] *Espano v. Court of Appeals*, 351 Phil. 798, 806 (1998).

[48] *Dimacuha v. People*, G.R. No. 143705, 23 February 2007, 516 SCRA 513, 522-523.

In the case under consideration, none of the exceptions are present that would make the testimony of the confidential informant indispensable. As admitted by appellant, the police officers who testified against her were not known to her before her arrest. We likewise do not find material inconsistencies in their testimonies. Further, the informant is a person different from the poseur-buyer. What we find vital is appellant's apprehension while peddling and possessing dangerous drugs by PO1 Cosme and PO1 Llanderal.

To further cast doubt on the existence of the buy-bust operation, appellant contends that the alleged buy-bust operation suffered from severe infirmity, both factual and legal. She argues that not only was there no Pre-Operation and Coordination Report prior to the actual drug operation as required in Section 86[49] of Republic Act No. 9165, Section 21 thereof was also violated by the buy-bust team when it failed to make a physical inventory of the drugs seized and confiscated and to take photographs thereof in the presence of persons mentioned in said section.

Non-compliance with the aforesaid sections does not mean that no buy-bust operation against appellant ever took place. The failure of the police operatives to comply with Section 86 will neither render her arrest illegal nor the evidence seized from her inadmissible. In *People v. Sta. Maria*,[50] we have ruled on the same issue as follows:

> Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence, both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest.
>
> The argument is specious.
>
> x x x x x x x x x

[49] Erroneously cited by appellant as Section 80.

[50] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 630-632.

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. x x x.

Neither would non-compliance with Section 21[51] render an accused's arrest illegal or the items seized/confiscated from him

---

[51] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or

inadmissible.[52] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[53]

In the instant case, the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the case was shown not to have been broken. After PO1 Cosme and PO1 Llanderal seized and confiscated the dangerous drugs from appellant, same were marked and turned over to PO1 Ariosto Rana, the investigator of the case. The plastic sachet sold to PO1 Cosme was marked "JCC," while the two plastic sachets recovered by PO1 Llanderal were marked "RML-1" and "RML-2," respectively. As requested by P/Chief Insp. Rafael P. Santiago, Jr., the three plastic sachets containing white crystalline substance were forwarded to the Philippine National Police Crime Laboratory, Northern Police District Crime Laboratory Office, Caloocan City, for laboratory examination to determine the presence of any dangerous drug. Per Physical Sciences Report No. D-1217-03, the specimens submitted contain methylamphetamine hydrochloride, a dangerous drug.

The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[54] What is material to the prosecution for illegal

---

laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[52] *People v. Del Monte*, G.R. No. 179940, 23 April 2008.

[53] *People v. Concepcion*, G.R. No. 178876, 27 June 2008.

[54] *People v. Adam*, 459 Phil. 676, 684 (2003).

sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[55]

All these elements were established in the instant case. The prosecution clearly showed that the sale of the drugs actually happened and that the *shabu* subject of the sale was brought to and identified in court. The poseur-buyer (PO1 Cosme) positively identified appellant as the seller of the *shabu*. Per Physical Sciences Report No. D-1217-03 of Police Inspector Jesse Abadilla dela Rosa, Forensic Chemical Officer, the substance, weighing 2.05 grams, which was bought by PO1 Cosme from appellant for ₱3,000.00, was examined and found to be methylamphetamine hydrochloride (*shabu*). Poseur-buyer PO1 Cosme narrated the transaction with appellant as follows:

Q And how was the operation started?

A I was with the confidential informant and PO1 Randy Llanderal was just a distance away from us, sir.

Q And how about the other members of the team?

A They were in the van, sir.

Q Where did you do (sic) together with the informant?

A We proceeded to where *Alias* Inday was, sir.

Q Where is this place where she usually stands?

A Binangonan Street, sir, the same place.

Q Were you able to arrive in said place?

A Yes, sir.

Q Where was *Alias* Inday then at that time?

A She was standing along the street, sir.

x x x x x x x x x

Q What then did you do after seeing this *Alias* Inday standing in the street?

[55] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198.

A Together with the confidential informant, we approached *Alias* Inday and I was introduced to her, sir.

Q How were you introduced by your informant to *Alias* Inday?

A The confidential informant told her (Inday) that I am looking for a person who is selling *shabu*, sir.

Q What was the response of Inday?

A She asked me how much I intend to buy, sir.

Q What was your answer?

A I told her, "*KALAHATING BULTO. HALAGANG TATLONG LIBO*."

Q What then transpired after you told her your intention to buy?

A I first gave the money to *Alias* Inday, sir.

Q And after that?

A Then she took plastic sachets containing suspected *shabu* from her pocket and she gave me one (1) plastic sachet, sir.

Q What did she do with the other plastic sachets?

A She returned them to her pocket, sir.

Q After that what then did you do?

A After I took hold of the plastic sachet containing *shabu*, I examined it then after that I scratched my ear, sir.

Q And then?

A When I noticed that PO1 Randy Llanderal was already near us, I held *Alias* Inday, sir.

Q After you introduced yourself as police officer, what else did you do?

A I took from her the buy-bust money worth three thousand (₱3,000.00) pesos, sir.

Q And were you able to get it?

Court —

Q From where in relation to the person of Inday?

A She was still holding the money, your Honor.[56]

Appellant was likewise indicted for possession of two sachets of *shabu* respectively weighing 1.84 grams and 2.06 grams for a total weight of 3.90 grams. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[57] All these elements have been established. PO1 Llanderal testified:

Q- You started the buy bust operation at about 8:00 o'clock in the evening of December 17, 2003?

Q- What did your team do?

A- Me and PO1 Cosme alighted from the van together with the informant.

Q- Where did you proceed?

A- PO1 Cosme proceeded to the place where Inday was standing together with the informant.

Q- How far were you from them referring to Cosme and the informant?

A- I hid near the parked jeep around five (5) meters away from them.

Q- And then what did you do with the distance of five (5) meters?

A- We were observing them and their actions.

Q- Where were you positioned then in that distance of five (5) meters away?

A- I was inside the passenger jeepney.

Q- Was there anything blocking your sight to the place of Cosme and the informant and also the place of Inday?

---

[56] TSN, 14 January 2004, pp. 9-12.

[57] *People v. Khor*, 366 Phil. 762, 777 (1999).

A- There was nothing blocking my sight.

Q- What did you observe if any?

A- I saw PO1 Cosme introduced by the asset to Inday and I saw them talking sir.

Q- And then what else did you observe?

A- They were talking and I overheard Inday asking how much, sir.

Q- And what was the reply of PO1 Cosme if you hear it?

A- That I will buy "*kalahati*".

Court: How far were you when you overheard the transaction between Cosme and the accused?

A- I was five (5) meters away, sir.

Court: You were only five meters away?

A- Yes, sir.

Court: Why, were you hiding at that time?

A- I was hiding but I can see their transaction, sir.

Court: You mean to say from the place where you were located at that time you can overheard their transaction?

A- Yes, your Honor the buying and handing.

Q- What do you mean you saw the handing of Cosme the extending of money?

A- Yes, your Honor.

Q- Did you see also the accused counting the money she allegedly received?

A- After PO1 Cosme handed the money, *alias* Inday took the plastic sachet, placed the money in her pocket and she took something from the other side of her pocket.

Court: Of course you did not if there were two, three she just extended to him something?

A- After she took three (3) plastic sachets, one was given to PO1 Joel Cosme and the two (2) remaining sachets, she returned it to her pocket.

Q- After she put back the two (2) plastic sachets to her pocket, what then transpired?

A- Then PO1 Joel Cosme scratched his ear as pre-arranged signal.

Q- After seeing the pre-arranged signal, what did you do?

A- I slowly approached them sir.

Q- What did you do then after approaching them?

A- While I was approaching them, PO1 Cosme identified himself to *Alias* Inday and *Alias* Inday was arrested.

Q- How about you, what did you do?

A- And upon seeing PO1 Joel Cosme arresting *Alias* Inday, I requested *Alias* Inday to pull out her pocket.

Q- And what is the reaction of *Alias* Inday when you asked her to unload everything in her pocket?

A- She uttered something that she does not know anything.

Q- And then?

A- I ordered her to "*ilabas mong lahat ang nasa iyong bulsa*."

Q- And then?

A- After she pulled out her hand, I saw two (2) plastic sachets as far as I know it contained *shabu*.

Q- And then what did you do upon seeing plastic sachets taken by her from her pocket which you suspect to be *shabu*?

A- We informed her that she is being arrested.[58]

Finally, appellant's allegation that the police officers were exacting ₱200,000.00 from her has no basis. Except for her bare allegations, unsupported by concrete proof, we cannot give such imputation a second look.

IN ALL, the evidence for the prosecution established that appellant was apprehended *in flagrante* during a buy-bust operation in which she sold a sachet of *shabu* to PO1 Cosme,

[58] TSN, 4 February 2004, pp. 11-18.

who acted as poseur-buyer, and was thereafter caught by PO1 Llanderal in possession of two more sachets of *shabu*.

In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[59] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[60]

In the instant case, appellant miserably failed to show that the members of the buy-bust team were impelled by any improper motive or that they did not properly perform their duty. This being the case, we uphold the presumption of regularity in the performance of official duties. The law disputably presumes that official duty has been regularly performed.[61] The presumption was not overcome, there being no evidence showing that PO1 Cosme, PO1 Llanderal and the rest of the team were impelled by improper motive. In fact, appellant admitted that prior to the incident, she did not know PO1 Cosme, PO1 Llanderal and the rest of the buy-bust team.

Having been caught *in flagrante*, appellant's identity as seller and possessor of the *shabu* can no longer be disputed. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[62] Frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover,

---

[59] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

[60] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.

[61] *People v. Garcia*, G.R. No. 105805, 16 August 1994, 235 SCRA 371, 377.

[62] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[63] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[64]

We now go to the penalties imposed on appellant for selling and possessing *shabu*. For selling *shabu* weighing 2.05 grams, the trial court imposed on appellant the penalty of life imprisonment and a fine of ₱500,000.00. Said penalty was affirmed by the Court of Appeals. As regards appellant's possession of 3.90 grams of *shabu*, the trial court imposed on him the penalty of twelve (12) years and one (1) day to twenty (20) years and a fine of ₱300,000.00. The Court of Appeals, applying the Indeterminate Sentence Law,[65] modified the penalty of imprisonment to twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00.[66] The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused.[67] With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the

---

[63] *People v. Eugenio*, 443 Phil. 411, 419 (2003).

[64] *People v. Zheng Bai Hui*, 393 Phil. 68, 136 (2000).

[65] Act No. 4103.

[66] 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.

[67] *People v. Quiaoit, Jr.*, G.R. No. 175222, 27 July 2007, 528 SCRA 474, 489.

Philippines," the imposition of the supreme penalty of death has been proscribed. Thus, the penalty to be imposed on appellant shall only be life imprisonment and fine. Finding that the penalty imposed on appellant for selling *shabu* is in accordance with law, this Court upholds the same.

As regards possession of dangerous drugs, the same is punished under Section 11, Article II of Republic Act No. 9165. Paragraph 2, No. 3 thereof, reads:

> (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 x x x methamphetamine hydrochloride x x x.

Having been caught in possession of 3.90 grams of *shabu* or *methamphetamine hydrochloride,* the afore-quoted paragraph provides for the appropriate penalty. Going over the penalty imposed by the Court of Appeals, we find it to be within the range provided for by law. We therefore sustain it.

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01344 dated 29 December 2006 sustaining the conviction of appellant Marilyn C. Naquita for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160859. July 30, 2008]

BAY HAVEN, INC., JOHNNY T. CO, and VIVIAN TE-FERNANDEZ, *petitioners, vs.* **FLORENTINO ABUAN, JOSELITO RAZON, JERRY ASENSE, HERCULES RICAFUENTE, MARIO GURAY, ROLANDO NAELGA, JUAN VILLARUZ, MARIO SANTIAGO, ROGELIO MOCORRO, CALPITO MENDOLES, RENE CORALES, FRANCISCO ABENTAJADO, BONNIE ESPAÑOLA, ERNESTO DE JESUS and RODRIGO RUZGAL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; VISITORIAL AND ENFORCEMENT POWERS OF THE DOLE SECRETARY; ENCOMPASS COMPLIANCE WITH ALL LABOR STANDARDS REGARDLESS OF AMOUNT OF CLAIMS FILED BY WORKERS. — The Court has held that the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, *regardless* of the amount of the claims filed by workers. This has been the rule since R.A. No. 7730 was enacted on June 2, 1994, amending Article 128(b) of the Labor Code, to expand the visitorial and enforcement powers of the DOLE Secretary. Under the former rule, the DOLE Secretary had jurisdiction only in cases where the amount of the claim does not exceed ₱5,000.00.

2. ID.; ID.; ID.; ID.; REGIONAL DIRECTOR; POWERS. — Moreover, Abuan's allegation of illegal dismissal was his personal accusation, and did not necessarily apply to all the other employees. The records also do not support a contrary finding. But Abuan's other allegations of underpayment and other potential violations of labor laws and regulations were within the obligation of the Regional Director to investigate, especially insofar as they affect Abuan's remaining co-workers. Under Art. 128, the Regional Director can conduct inspections

and check *all* violations of labor laws, and enforce compliance measures for the benefit of *all* employees, without being compelled to rely on a complaint that has been filed or its allegations. In fact, the article is silent on whether the filing of a complaint is even required to initiate the exercise of the inspection and enforcement powers.

3. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; NO DENIAL WHERE OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENTS OR PLEADINGS IS ACCORDED. — Petitioners themselves cannot deny that due process was afforded them after the inspection. For one thing, their motion for reconsideration of the Order dated November 7, 1997 was granted, which resulted in the re-opening of the proceedings and the holding of subsequent hearings. In these hearings, petitioners were given the chance to air their side. Petitioners also submitted their position paper, in which they summarized all their arguments and presented their documentary evidence, such as a contract of lease, payroll sheets and quitclaims, to refute the respondents' claims, as well as the inspector's findings. In the petition now before us, petitioners themselves claim that they seasonably contested the findings of the labor inspector. Taking all these into consideration, the ineluctable conclusion is that the demands of due process were satisfied, as petitioners had been given all the opportunity to be heard. It has been held that where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; VISITORIAL AND ENFORCEMENT POWERS OF THE DOLE SECRETARY; DIVESTMENT OF JURISDICTION TO EXERCISE POWERS OVER WORKERS' CLAIMS; THREE ELEMENTS MUST CONCUR. — The mere disagreement by the employer with the findings of the labor officer, or the simple act of presenting controverting evidence, does not automatically divest the DOLE Secretary or any of his authorized representatives such as the regional directors, of jurisdiction to exercise their visitorial and enforcement powers under the Labor Code. Under prevailing jurisprudence, the so-called exception clause in Art. 128(b) of the Labor Code has the following elements, which must all concur to divest the regional director of jurisdiction over workers' claims: (a)

that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. Thus, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters are *not* verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine them; and these officers are not divested of jurisdiction to decide the case.

5. ID.; ID.; QUITCLAIMS; WELL ESTABLISHED THAT QUITCLAIMS EXECUTED BY THE EMPLOYEES DO NOT ESTOP THEM FROM PURSUING THEIR CLAIMS ARISING FROM THE UNFAIR LABOR PRACTICE OF THE EMPLOYER. — As to the quitclaims, we need only to reiterate the policy laid down in *AFP Mutual Benefit Association, Inc. v. AFP-MBAI-EU,* which states: In labor jurisprudence, it is well established that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from the unfair labor practice of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination pay does not divest a laborer of the right to prosecute his employer for unfair labor practice acts. In the *Cariño* case, *supra*, the Supreme Court, speaking thru Justice Sanchez, said: Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur.*

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACTS; MAY NOT BE ADDRESSED IN A PETITION FOR REVIEW; EXCEPTIONS; CASE AT BAR.

— Although the basic rule is that questions of facts like this may not be addressed in a petition for review, there are certain exceptions, such as when the judgment is based on a misapprehension of facts. At the earliest possible opportunity, that is, as early as the position paper filed on September 14, 1998, petitioners already denied being the employers of the respondents Calpito Mendoles and Rene Corales. Later, in their Motion for Reconsideration dated January 8, 2004, petitioners also disclaimed liability to Rolando Naelga, who was not in the labor inspector's and Regional Director's original list of petitioners' workers and against whom petitioners were not afforded the chance to present countervailing evidence. Since then, petitioners have consistently denied liability as employers of these respondents. These respondents, however, not only failed to controvert this denial by petitioners, they also did not participate in the proceedings of the case, as shown by the records. Thus, there was a failure to prove the existence of an employer-employee relationship between petitioners and these particular respondents. Respondents could have easily proven their relationship by presenting any of the following: their appointment letters or employment contracts, payrolls, organization charts, Social Security System registration, personnel list, as well as the testimonies of co-employees to confirm their status, but failed to do so. We can only conclude, therefore, that there is no substantial evidence to prove petitioners' obligations to these respondents.

APPEARANCES OF COUNSEL

Eduardo J. Mariño, Jr. for petitioners.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking a reversal of the Decision[1] of

[1] Penned by now Presiding Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, *rollo*, pp. 57-65.

the Court of Appeals (CA) dated July 15, 2003, which denied the petition for *certiorari* filed by Bay Haven, Inc., Johnny T. Co and Vivian Te-Fernandez (Te) (petitioners) seeking the annulment of the Resolutions dated April 18, 2000 and September 19, 2001, issued by Undersecretary Jose M. Español, Jr. (DOLE Undersecretary) and Secretary Patricia Sto. Tomas (DOLE Secretary), respectively, of the Department of Labor and Employment (DOLE), as well as the Resolution[2] dated November 5, 2003 of the CA, which denied petitioners' motion for reconsideration.

The following are the antecedent facts.

Upon complaint of Florentino Abuan, one of herein respondents, the DOLE, in the exercise of its visitorial, inspection and enforcement powers, through its Regional Director for the National Capital Region (NCR), issued an Order dated November 7, 1997 commanding petitioners to pay respondents a total of ₱638,187.15 corresponding to the latter's claims for underpayment as petitioners' workers.[3]

The Regional Director based his Order on the results of the inspection conducted on April 23, 1997 by one of its inspectors who found that petitioner New Bay Haven Restaurant, located at the Army and Navy Club, Kalaw St., Manila, under the ownership or management of petitioner Te, committed the following violations:

Labor Standards Law:
1. Underpayment of minimum wage.
2. Underpayment of thirteenth month pay.
3. Underpayment of regular holiday pay.
4. Underpayment of special holiday pay.
5. Non-payment of night shift differential pay.

Occupational Safety and Health Standards.
1. Non-registration of the firm under Rule 1020 of OSHS.[4]

---

[2] *Id.* at 66-67.

[3] *Rollo,* pp. 124-126.

[4] *Id.* at 123.

On December 18, 1997, New Bay-Haven Restaurant and its co-petitioner Te filed with the DOLE-NCR Regional Office a Motion for Reconsideration of the November 7, 1997 order, alleging that the office had no jurisdiction over the case and that the order was issued in denial of petitioners' right to due process.[5] They argued that jurisdiction over the case was lodged with the National Labor Relations Commission (NLRC), and not the DOLE-NCR, due to the amount of the claims involved. They added that their right to due process was also denied because the order was issued without them being furnished copies of the complaint and the inspection report and without being notified of the hearings held in the case.[6]

On June 16, 1998, the DOLE-NCR Assistant Regional Director, acting for the Regional Director, issued an Order granting petitioners' motion for reconsideration as he found merit in petitioners' allegation of absence of due process in the issuance of the first order.[7] The order, however, stated that the DOLE had jurisdiction over the case, pursuant to the Labor Code, as amended by Republic Act (R.A.) No. 7730, that intends to strengthen the visitorial and enforcement powers of the Secretary of Labor and Employment.[8] Consequently, another hearing for the case was set.

During the hearing on September 14, 1998, petitioners submitted their Position Paper attaching thereto payroll sheets and waivers and quitclaims allegedly signed by the respondents to prove that petitioner properly paid respondents the amounts due them.[9]

Respondents Florentino Abuan, Francisco Abentajado, Mario Guray, Juan Villaruz, Jerry Asense and Joselito Razon, however, outrightly denied the validity of the payroll sheets and quitclaims. In their Joint Affidavit dated October 29, 1998, respondents

---

[5] *Id.* at 127-131.

[6] *Rollo*.

[7] *Id.* at 132-134.

[8] *Id.* at 133.

[9] *Id.* at 144-173.

claimed that the actual daily pay they received was much smaller than the amounts stated in the payroll and they denied having received the cash amount stated in the quitclaims.[10] They added that they were merely forced to sign the payrolls and quitclaims in blank and in one sitting after they were accepted as applicants for their positions.[11]

On December 29, 1998, the DOLE-NCR Regional Director, giving credence to the affidavit of the respondents denying the validity of the payroll sheets and quitclaims, issued an Order denying petitioners' motion for reconsideration of the Order dated November 7, 1997.[12] The Order held petitioners New Bay Haven Restaurant, Bay Haven, Inc., its President Johnny T. Co, and/or Vivian Te as the ones liable as employers of respondents. However, the liability of petitioners was reduced to ₱468,444.16.[13]

On January 18, 1999, petitioners filed a Motion for Reconsideration of the Order dated December 29, 1998.[14] In the motion, petitioners insisted that their documentary evidence proved that their obligations to respondents had been discharged and that the DOLE had no jurisdiction over the case.[15]

Treating the motion for reconsideration as an appeal, the DOLE Undersecretary issued a Resolution dated April 18, 2000, denying the appeal filed by petitioners,[16] upholding the Regional Director's finding that the quitclaims could not be relied upon to deny respondents' claims, and reiterating that the DOLE had jurisdiction to decide the case.[17]

---

[10] *Id.* at 174-175.

[11] *Id.* at 174.

[12] *Rollo*, pp. 180-189.

[13] *Id.* at 188.

[14] *Id.* at 190-194.

[15] *Id.* at 191-192.

[16] *Id.* at 111-114.

[17] *Id.* at 113-114.

On May 12, 2000, petitioners filed a Motion for Reconsideration[18] of the April 18, 2000 Resolution which was denied by DOLE Secretary Sto. Tomas in a Resolution[19] dated September 19, 2001.

Aggrieved, petitioners filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA, seeking to annul and set aside the April 18, 2000 Resolution and the September 19, 2001 Resolution,[20] docketed as CA-G.R. No. 68397.

On July 15, 2003, the CA rendered its Decision,[21] dismissing the petition, ruling that the DOLE had jurisdiction over the labor standards case and that petitioners did not present enough evidence to refute the claims made by respondents.

Petitioners filed a Motion for Reconsideration of the Decision which the CA denied in its Resolution[22] dated November 5, 2003.

Hence, herein petition assigning the following errors of the CA:

1. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT UPHELD THE JURISDICTION OF THE REGIONAL DIRECTOR FOR THE NATIONAL CAPITAL REGION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT IN CASE NO. NCR-00-9703-RI-048-SPL ENTITLED FLORENTINO ABUAN, ET AL., COMPLAINANTS VERSUS NEW BAY HAVEN RESTAURANT, ET AL., RESPONDENTS; AND THE APPELLATE JURISDICTION OF THE OFFICE OF THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT IN CASE NO. OS-LS-005-019-099.
2. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT

---

[18] *Id.* at 195-206.

[19] *Id.* at 115-116.

[20] *Id.* at 68-108.

[21] *Supra* note 2.

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

SUSTAINED THE RULING OF THE REGIONAL DIRECTOR OF DOLE-NCR AND THE OFFICE OF THE SECRETARY OF THE DOLE WHICH DECLARED THAT RESPONDENTS CALPITO MENDOLES AND RENE CORALES ARE EMPLOYEES OF BAY HAVEN, INC., DESPITE LACK OF EVIDENCE TO SUPPORT THE RULING ON THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.

3. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT UPHELD THE MONETARY AWARD OF ₱25,952.83 TO RESPONDENT ROLANDO NAELGA WHO WAS NOT ONE OF THOSE WHOSE CLAIMS WAS [sic] MADE THE SUBJECT OF THE FINDINGS OF THE LABOR AND [sic] EMPLOYMENT AND ENFORCEMENT OFFICER OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

4. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT SUSTAINED THE AWARD OF OVERTIME PAY DESPITE ABSENCE OF EVIDENCE TO SHOW THAT OVERTIME WORK HAD INDEED BEEN RENDERED.

Respondents did not file a comment on the petition, but instead filed a Memorandum[23] simultaneous with petitioners' filing of their Memorandum.[24]

In their Memorandum, respondents aver that the decision of the DOLE-NCR, as upheld by the DOLE Secretary, was rendered in the exercise of its jurisdiction, specifically its visitorial and enforcement powers as conferred by law.[25] They also allege that petitioners were given the opportunity to present evidence to refute respondents' claims, but failed to do so.[26]

We summarize the issues as follows: 1) whether the DOLE Secretary and her authorized representatives have jurisdiction

---

[23] *Rollo,* pp. 253-263.

[24] *Id.* at 264-303.

[25] *Id.* at 260.

[26] *Id.* at 261.

to impose the monetary liability against petitioners; and 2) whether the DOLE-NCR, as upheld by the DOLE Secretary and the CA committed an error in awarding the claims of respondents.

We deny the petition.

The DOLE Secretary and her authorized representatives such as the DOLE-NCR Regional Director, have jurisdiction to enforce compliance with labor standards laws under the broad visitorial and enforcement powers conferred by Article 128 of the Labor Code, and expanded by R.A. No. 7730, to wit:

Art. 128. *Visitorial and Enforcement Power. —*

(a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) **Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection**. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited

by the Secretary of Labor and Employment and Employment in the amount equivalent to the monetary award in the order appealed from. (Emphasis supplied)

The Court has held that the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, *regardless* of the amount of the claims filed by workers.[27] This has been the rule since R.A. No. 7730 was enacted on June 2, 1994, amending Article 128(b) of the Labor Code, to expand the visitorial and enforcement powers of the DOLE Secretary. Under the former rule, the DOLE Secretary had jurisdiction only in cases where the amount of the claim does not exceed ₱5,000.00.

Petitioners argue, however, that DOLE-NCR should not have taken jurisdiction of the case, because in respondent Abuan's complaint, one of the entries reads as follows:

> Is there anything that the Department of Labor and Employment can do to be of further assistance to you?
> [Answer:] Illegal dismissal, no overtime, no holiday pay.[28]

Petitioners contend that the complaint's own allegation of illegal dismissal meant that no more employer-employee relationship existed between petitioners and respondents, depriving DOLE-NCR and the Secretary of Labor and Employment of jurisdiction to entertain the complaint.[29] This allegedly is a requirement under Art. 128(b) of the Labor Code, hereinbefore quoted.

---

[27] *Cirineo Bowling Plaza, Inc. v. Sensing*, G.R. No. 146572, January 14, 2005, 448 SCRA 175, 186; *V.L. Enterprises v. Court of Appeals*, G.R. No. 167512, March 12, 2007, 518 SCRA 174, 181-182; *Ex-Bataan Veterans Security Agency, Inc. v. Secretary of Labor*, G.R. No. 152396, November 20, 2007, 537 SCRA 651, 663; *Allied Investigation Bureau, Inc. v. Secretary of Labor*, G.R. No. 122006, November 24, 1999, 319 SCRA 77, 83; *Guico, Jr. v. Secretary of Labor*, G.R. No. 131750, November 16, 1998, 298 SCRA 666, 675.

[28] *Rollo*, pp. 33-34, 122.

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

Petitioners' contentions are untenable. While it may be true that as far as respondent Abuan is concerned, his allegation of illegal dismissal had deprived the DOLE of jurisdiction as per Art. 217 of the Labor Code,[30] the same does not hold for the rest of the respondents, who do not claim to have been illegally dismissed. For one, petitioners failed to raise this matter with the Regional Director or even the DOLE Secretary, thus, preventing the issue from being clarified.

The records also clearly indicate that the Regional Director and the DOLE Secretary resolved the case based only on the following violations found by the labor inspection officer, which do not include illegal dismissal, thus:

1. Underpayment of minimum wage.
2. Underpayment of thirteenth month pay.
3. Underpayment of regular holiday pay.
4. Underpayment of special holiday pay.
5. Non-payment of night shift differential pay.
6. Non-registration of the firm under Rule 1020 of OSHS.

The above-mentioned violations are within the jurisdiction of the DOLE Secretary and his representatives to address. The questioned Orders dated December 29, 1998, April 18, 2000 and September 19, 2001 did not mention illegal dismissal, and properly so, because there was no such finding in the inspector's report.[31] Being in the nature of compliance orders, said orders, under Art. 128(b) of the Labor Code, are strictly based on "the

---

[30] Art. 217. *Jurisdiction of Labor Arbiters and the Commission.* (a) Except as otherwise provided under this Code, the Labor Arbiters shall have **original and exclusive jurisdiction** to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. **Termination disputes;**

x x x x x x x x x

(Emphasis supplied)

[31] *Rollo*, p. 123.

findings of labor employment and enforcement officers x x x made in the course of inspection," and not on any complaint filed. Though a complaint may initiate the case or an inspection, its allegations may not necessarily be upheld by the labor inspector or the Regional Director.

Moreover, Abuan's allegation of illegal dismissal was his personal accusation, and did not necessarily apply to all the other employees. The records also do not support a contrary finding. But Abuan's other allegations of underpayment and other potential violations of labor laws and regulations were within the obligation of the Regional Director to investigate, especially insofar as they affect Abuan's remaining co-workers. Under Art. 128, the Regional Director can conduct inspections and check *all* violations of labor laws, and enforce compliance measures for the benefit of *all* employees, without being compelled to rely on a complaint that has been filed or its allegations. In fact, the article is silent on whether the filing of a complaint is even required to initiate the exercise of the inspection and enforcement powers.

Petitioners also insinuate that they were effectively denied due process at the earlier stages of the controversy, as they claim that during the inspection, the inspector "did not even bother to talk to any them."[32] Again, petitioners are raising serious, factual allegations in this late stage of their appeal. They never mentioned this alleged infraction in the very first motion they filed or in their Motion for Reconsideration[33] of the Regional Director's Order dated November 7, 1997. Neither did they raise it in their Position Paper[34] dated September 14, 1998, depriving the concerned officer, that is, the labor inspector, of the chance to deny or refute such serious allegations.

Petitioners themselves cannot deny that due process was afforded them after the inspection. For one thing, their motion for reconsideration of the Order dated November 7, 1997 was

---

[32] *Rollo*, p. 34.

[33] *Id.* at 127-131.

[34] *Id.* at 144-173.

granted, which resulted in the re-opening of the proceedings and the holding of subsequent hearings. In these hearings, petitioners were given the chance to air their side. Petitioners also submitted their position paper, in which they summarized all their arguments and presented their documentary evidence, such as a contract of lease, payroll sheets and quitclaims, to refute the respondents' claims, as well as the inspector's findings. In the petition now before us, petitioners themselves claim that they seasonably contested the findings of the labor inspector.[35] Taking all these into consideration, the ineluctable conclusion is that the demands of due process were satisfied, as petitioners had been given all the opportunity to be heard. It has been held that where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[36]

Next, petitioners argue that the regional director was divested of jurisdiction because petitioners contested the findings of the labor inspection officer. This, allegedly, is in accordance with Art. 128(b) of the Labor Code, which states:

Art. 128. *Visitorial and Enforcement Power.* —

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, **except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.**

---

[35] *Rollo,* pp. 37-41.

[36] *Gacutana-Fraile v. Domingo,* G.R. No. 138518, December 15, 2000, 348 SCRA 414, 423, citing *Alba v. Nitorreda,* G.R. No. 120223, March 13, 1996, 254 SCRA 753, 763-764.

x x x x x x x x x
(Emphasis supplied)

Again, petitioners fail to persuade. The mere disagreement by the employer with the findings of the labor officer, or the simple act of presenting controverting evidence, does not automatically divest the DOLE Secretary or any of his authorized representatives such as the regional directors, of jurisdiction to exercise their visitorial and enforcement powers under the Labor Code.

Under prevailing jurisprudence, the so-called exception clause in Art. 128(b) of the Labor Code has the following elements, which must all concur to divest the regional director of jurisdiction over workers' claims:

(a) that the employer contests the findings of the labor regulations officer and raises issues thereon;
(b) that in order to resolve such issues, there is a need to examine evidentiary matters; and
(c) that such matters are not verifiable in the normal course of inspection.[37]

Thus, in *SSK Parts Corporation v. Camas,*[38] in which the employer contested the Regional Director's finding of violations of labor standards, but such issue was resolved by an examination of evidentiary matters which were verifiable in the ordinary course of inspection, it was held that there was no more need to indorse the case to the arbitration branch of the NLRC. In *Ex-Bataan Veterans Security Agency, Inc. v. Secretary of Labor*,[39] the Court held:

The Court notes that EBVSAI did not contest the findings of the labor regulations officer during the hearing or after receipt of the

---

[37] *SSK Parts Corporation v. Camas*, G.R. No. 85934, January 30, 1990, 181 SCRA 675; *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, 370 Phil. 872 (1999); *Ex-Bataan Veterans Security Agency, Inc. v. Secretary of Labor, supra* note 27.

[38] *SSK Parts Corporation v. Camas, id.*

[39] *Ex-Bataan Veterans Security Agency, Inc. v. Secretary of Labor, id.*

notice of inspection results. It was only in its supplemental motion for reconsideration before the Regional Director that EBVSAI questioned the findings of the labor regulations officer and presented documentary evidence to controvert the claims of private respondents. **But even if this was the case, the Regional Director and the Secretary of Labor still looked into and considered EBVSAI's documentary evidence and found that such did not warrant the reversal of the Regional Director's order. The Secretary of Labor also doubted the veracity and authenticity of EBVSAI's documentary evidence. Moreover, the pieces of evidence presented by EBVSAI were verifiable in the normal course of inspection** because all employment records of the employees should be kept and maintained in or about the premises of the workplace, which in this case is in Ambuklao Plant, the establishment where private respondents were regularly assigned.[40] (Emphasis supplied)

Thus, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters are *not* verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine them; and these officers are not divested of jurisdiction to decide the case.

In the present case, petitioners' pieces of evidence of the alleged contract of lease, payroll sheets, and quitclaims were all verifiable in the normal course of inspection and, granting that they were not examined by the labor inspector, they have nevertheless been thoroughly examined by the Regional Director and the DOLE Secretary. For these reasons, the exclusion clause of Art. 128(b) does not apply.

In addition, the findings of the said officers on the invalidity or low probative value of these documents are findings of a factual nature which this Court will accord with great respect.[41]

---

[40] *Id.* at 664.

[41] *Mehitabel Furniture Co., Inc. v. National Labor Relations Commission*, G.R. No. 101268, March 30, 1993, 220 SCRA 602, 605; *Aggabao v. Gamboa*, No. 54760, August 30, 1982, 116 SCRA 280.

As to the quitclaims, we need only to reiterate the policy laid down in *AFP Mutual Benefit Association, Inc. v. AFP-MBAI-EU*,[42] which states:

> In labor jurisprudence, it is well established that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from the unfair labor practice of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination pay does not divest a laborer of the right to prosecute his employer for unfair labor practice acts. (*Cariño vs. ACCFA*, L-19808, September 29, 1966, 18 SCRA 163; *Philippine Sugar Institute vs. CIR*, L-13475, September 29, 1960, 109 Phil. 452; *Mercury Drug Co. vs. CIR*, L-23357, April 30, 1974, 56 SCRA 694, 704)

In the *Cariño* case, *supra*, the Supreme Court, speaking thru Justice Sanchez, said:

> Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur*.

The principle enunciated above, however, should benefit only the respondents in the present case who outrightly denied the quitclaims' validity, because it may be supposed that those who did not protest petitioners' presentation of the quitclaims in evidence have admitted the same by their silence.[43] In such instance, only respondents Francisco Abentajado, Mario Guray, Juan Villaruz, Jerry Asense and Joselito Razon are deemed to have blocked the quitclaims' applicability against them.[44]

---

[42] G.R. No. L-39140, May 17, 1980, 97 SCRA 715, 729-730.

[43] RULES OF COURT, Rule 130, Sec. 32.

[44] Respondent Mario Santiago is named in the Affidavit but is not a signatory.

Anent the second issue, petitioners contend that the Regional Director and the DOLE Secretary committed error in their award of the various claims of respondents, specifically citing the award to certain respondents whom they deny having worked as their employees.

Here, there is merit in petitioners' contentions. Although the basic rule is that questions of facts like this may not be addressed in a petition for review, there are certain exceptions, such as when the judgment is based on a misapprehension of facts.[45] At the earliest possible opportunity, that is, as early as the position paper filed on September 14, 1998, petitioners already denied being the employers of the respondents Calpito Mendoles and Rene Corales. Later, in their Motion for Reconsideration[46] dated January 8, 2004, petitioners also disclaimed liability to Rolando Naelga, who was not in the labor inspector's and Regional Director's original list of petitioners' workers and against whom petitioners were not afforded the chance to present countervailing evidence. Since then, petitioners have consistently denied liability as employers of these respondents. These respondents, however, not only failed to controvert this denial by petitioners, they also did not participate in the proceedings of the case, as shown by the records. Thus, there was a failure to prove the existence of an employer-employee relationship between petitioners and these particular respondents. Respondents could have easily proven their relationship by presenting any of the following: their appointment letters or employment contracts, payrolls, organization charts, Social Security System registration, personnel list, as well as the testimonies of co-employees to confirm their status,[47] but failed to do so. We can only conclude, therefore, that there is no substantial evidence to prove petitioners' obligations to these respondents.

---

[45] *BPI Credit Corporation v. Court of Appeals*, G.R. No. 96755, December 4, 1991, 204 SCRA 601.

[46] *Rollo*, pp. 207-226, 217.

[47] *MacLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 245.

However, we do not sustain petitioners' allegation that the Regional Director and the DOLE Secretary erroneously awarded overtime pay to the respondents, despite the lack of proof that overtime work had been rendered. Suffice it to state that petitioners' own evidence, which are the payroll sheets they submitted to the Regional Director,[48] show that respondents indeed rendered overtime work. This amounts to an admission by petitioners, which may be used in evidence against them.[49] Aptly, this then became one of the bases of the Regional Director's award of overtime pay to respondents.

In summary, we hold that only the awards granted to the following respondents be affirmed:

1. Juan Villaruz
2. Francisco Abentajado
3. Jerry Asense
4. Mario Guray
5. Joselito Razon

The award in favor of Florentino Abuan is deleted, as his claim for illegal dismissal is within the original and exclusive jurisdiction of the Labor Arbiter, and outside of the jurisdiction of the DOLE Secretary and the Regional Director. The awards granted to the rest of the respondents are likewise deleted for lack of evidence to prove petitioners' liability as to them.

WHEREFORE, the decision appealed from is *AFFIRMED*, with the *MODIFICATION* that only respondents Juan Villaruz, Francisco Abentajado, Jerry Asense, Mario Guray, and Joselito Razon be *GRANTED* their monetary awards while the awards given to the rest of the respondents are *DELETED*.

No costs.

SO ORDERED.

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

---

[48] *Rollo,* pp. 144-172.

[49] RULES OF COURT, Rule 130, Sec. 26.

THIRD DIVISION

[G.R. No. 161220. July 30, 2008]

SPOUSES GORGONIO BENATIRO AND COLUMBA CUYOS-BENATIRO substituted by their heirs, namely: Isabelita, Renato, Rosadelia and Gorgonio, Jr., surnamed Benatiro, and SPOUSES RENATO C. BENATIRO AND ROSIE M. BENATIRO, *petitioners, vs.* **HEIRS OF EVARISTO CUYOS, namely: Gloria Cuyos-Talian, Patrocenia Cuyos-Mijares, Numeriano Cuyos, and Enrique Cuyos, represented by their attorney-in-fact, Salud Cuyos,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; WHEN PROPER. — Although Section 2 of Rule 47 of the Rules of Court provides that annulment of a final judgment or order of an RTC may be based "only on the grounds of extrinsic fraud and lack of jurisdiction," jurisprudence recognizes denial of due process as additional ground therefor. An action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character. Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.

2. ID.; ID.; ID.; DENIAL OF DUE PROCESS AS ADDITIONAL GROUND; CASE AT BAR. — While we find that the CA correctly annulled the CFI Order dated December 16, 1976, we find that it should be annulled not on the ground of extrinsic

fraud, as there is no sufficient evidence to hold Atty. Taneo or any of the heirs guilty of fraud, but on the ground that the assailed order is void for lack of due process. Clerk of Court Taneo was appointed to act as Commissioner to effect the agreement of the heirs and to prepare the project of partition for submission and approval of the court. While, under the general rule, it is to be presumed that everything done by an officer in connection with the performance of an official act in the line of his duty was legally done, such presumption may be overcome by evidence to the contrary. We find the instances mentioned by the CA, such as absence of the names of the persons present in the conference, absence of the signatures of the heirs in the Commissioner's Report, as well as absence of evidence showing that respondents were notified of the conference, to be competent proofs of irregularity that rebut the presumption. Applying *Cua v. Vargas* by analogy, what matters is whether the heirs were indeed notified before the compromise agreement was arrived at, which was not established, and not whether they were notified of the Commissioner's Report embodying the alleged agreement afterwards. Thus, we find no reversible error committed by the CA in ruling that the conference was not held accordingly and in annulling the assailed order of the CFI.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW. — We also find nothing in the records that would show that the heirs were called to a hearing to validate the Report. The CFI adopted and approved the Report despite the absence of the signatures of all the heirs showing conformity thereto. The CFI adopted the Report despite the statement therein that only six out of the nine heirs attended the conference, thus, effectively depriving the other heirs of their chance to be heard. The CFI's action was tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law. We find that the assailed Order dated December 16, 1976, which approved a void Commissioner's Report, is a void judgment for lack of due process.

4. REMEDIAL LAW; CIVIL PROCEDURE; VOID JUDGMENTS; CONSTRUED. — Considering that the assailed Order is a void judgment for lack of due process of law, it is no judgment at

all. It cannot be the source of any right or of any obligation. In *Nazareno v. Court of Appeals*, we stated the consequences of a void judgment, thus: **A void judgment never acquires finality**. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed non-existent. Thus, there was no effective or operative judgment to appeal from. In *Metropolitan Waterworks & Sewerage System vs. Sison,* this Court held that: x x x [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial. Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." The CFI's order being null and void, it may be assailed anytime, collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches. Consequently, the compromise agreement and the Order approving it must be declared null and void and set aside. Finally, considering that the assailed CFI judgment is void, it has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Hence, the execution of the Deed of Sale by Lope in favor of Columba pursuant to said void judgment, the issuance of titles pursuant to said Deed of Sale, and the subsequent transfers are void *ab initio*. No reversible error was thus committed by the CA in annulling the judgment.

5. ID.; LACHES; CONSTRUED; CASE AT BAR. — There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result. In this case, respondents learned of the assailed order only sometime in February 1998 and filed the petition for annulment of judgment in 2001. Moreover, we find that respondents' right to due process is the paramount consideration in annulling the assailed order. It bears stressing that an action to declare the nullity of a void judgment does not prescribe.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners seeking to annul the Decision[1] dated July 18, 2003 of the Court of Appeals (CA) and its Resolution[2] dated November 13, 2003 denying petitioners' motion for reconsideration issued in CA-G.R. SP No. 65630.[3]

---

[1] Penned by Justice Eloy R. Bello, Jr. and concurred in by Justices Cancio C. Garcia (former member of this Court) and Mariano C. del Castillo; *rollo*, pp. 32-39.

[2] *Id.* at 41.

[3] Entitled, "*Heirs of Evaristo Cuyos represented by their Attorney-in-fact, Salud Cuyos, Petitioners, v. Court of First Instance of Cebu, Branch XI, Sps. Gorgonio Benatiro and Columba Cuyos-Benatiro and Sps. Renato C. Benatiro and Rosie M. Benatiro, Respondents.*"

Spouses Evaristo Cuyos and Agatona Arrogante Cuyos were blessed with nine children, namely: Francisco, Victoria, Columba, Lope, Salud, Gloria, Patrocenia, Numeriano, and Enrique. On August 28, 1966, Evaristo died leaving six parcels of land located in Tapilon, Daanbantayan, Cebu covered by Tax Declaration (TD) Nos. 000725, 000728, 000729, 000730, 000731, 000732, all under the name of Agatona Arrogante.

On July 13, 1971, one of the heirs, Gloria Cuyos-Talian (respondent Gloria) represented by Atty. Victor Elliot Lepiten (Atty. Lepiten), filed before the Court of First Instance (CFI) now Regional Trial Court (RTC), Cebu, Branch XI, a petition[4] for Letters of Administration, docketed as Special Proceeding (SP) No. 24-BN entitled "In the Matter of the Intestate Estate of Evaristo Cuyos, Gloria Cuyos-Talian, petitioner." The petition was opposed by Gloria's brother, Francisco, who was represented by Atty. Jesus Yray (Atty. Yray).

In the hearing held on January 30, 1973, both parties together with their respective counsels appeared. Both counsels manifested that the parties had come to an agreement to settle their case. The trial court on even date issued an Order[5] appointing Gloria as administratrix of the estate. The dispositive portion reads:

> WHEREFORE, letters of administration of the estate of the late Evaristo Cuyos and including the undivided half accruing to his spouse Agatona Arrogante who recently died is hereby issued in favor of Mrs. Gloria Cuyos Talian who may qualify as such administratrix after posting a nominal bond of ₱1,000.00.[6]

Subsequently, in the Order[7] dated December 12, 1975, the CFI stated that when the Intestate Estate hearing was called on that date, respondent Gloria and her brother, oppositor Francisco, together with their respective counsels, appeared; that Atty. Yray, Francisco's counsel, manifested that the parties had come

---

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

[5] *Rollo*, pp. 81-84.

[6] *Id.* at 84.

[7] *Id.* at 55.

to an agreement to settle the case amicably; that both counsels suggested that the Clerk of Court, Atty. Andres C. Taneo (Atty. Taneo), be appointed to act as Commissioner to effect the agreement of the parties and to prepare the project of partition for the approval of the court. In the same Order, the Court of First Instance (CFI) appointed Atty. Taneo and ordered him to make a project of partition within 30 days from December 12, 1975 for submission and approval of the court.

In his Commissioner's Report[8] dated July 29, 1976, Atty. Taneo stated that he issued subpoenae supplemented by telegrams to all the heirs to cause their appearance on February 28 and 29, 1976 in Tapilon, Daanbantayan, Cebu, where the properties are located, for a conference or meeting to arrive at an agreement; that out of the nine heirs, only respondents Gloria, Salud and Enrique Cuyos failed to attend; that per return of the service, these three heirs could not be located in their respective given addresses; that since some of the heirs present resided outside the province of Cebu, they decided to go ahead with the scheduled meeting.

Atty. Taneo declared in his Report that the heirs who were present:

1. Agreed to consider all income of the properties of the estate during the time that Francisco Cuyos, one of the heirs, was administering the properties of the estate (without appointment from the Court) as having been properly and duly accounted for.

2. Agreed to consider all income of the properties of the estate during the administration of Gloria Cuyos Talian, (duly appointed by the Court) also one of the heirs as having been properly and duly accounted for.

3. Agreed to consider all motions filed in this proceedings demanding an accounting from Francisco Cuyos and Gloria Cuyos Talian, as having been withdrawn.

4. Agreed not to partition the properties of the estate but instead agreed to first sell it for the sum of ₱40,000.00 subject to

---

[8] *Rollo*, pp. 56-59.

the condition that should any of the heirs would be in a position to buy the properties of the estate, the rest of the eight (8) heirs will just receive only Four Thousand Pesos (₱4,000.00) each.

5. Agreed to equally divide the administration expenses to be deducted from their respective share of ₱4,000.00.[9]

The Report further stated that Columba Cuyos-Benatiro (Columba), one of the heirs, informed all those present in the conference of her desire to buy the properties of the estate, to which everybody present agreed, and considered her the buyer. Atty. Taneo explained that the delay in the submission of the Report was due to the request of respondent Gloria that she be given enough time to make some consultations on what was already agreed upon by the majority of the heirs; that it was only on July 11, 1976 that the letter of respondent Gloria was handed to Atty. Taneo, with the information that respondent Gloria was amenable to what had been agreed upon, provided she be given the sum of ₱5,570.00 as her share of the estate, since one of properties of the estate was mortgaged to her in order to defray their father's hospitalization.

Quoting the Commissioner's Report, the CFI issued the assailed Order[10] dated December 16, 1976, the dispositive portion of which reads as follows:

WHEREFORE, finding the terms and conditions agreed upon by the heirs to be in order, the same being not contrary to law, said compromise agreement as embodied in the report of the commissioner is hereby approved. The Court hereby orders the Administratrix to execute the deed of sale covering all the properties of the estate in favor of Columba Cuyos Benatiro after the payment to her of the sum of ₱36,000.00. The said sum of money shall remain in *custodia legis*, but after all the claims and administration expenses and the estate taxes shall have been paid for, the remainder shall, upon order of the Court, be divided equally among the heirs.[11]

---

[9] *Id.* at 57.

[10] *Rollo*, pp. 60-63.

[11] *Id.* at 63.

The CFI disapproved the claim of respondent Gloria for the sum of ₱5,570.00, as the same had been allegedly disregarded by the heirs present during the conference.

In an Order[12] dated January 11, 1978, the CFI appointed Lope Cuyos (Cuyos) as the new administrator of the estate, purportedly on the basis of the motion to relieve respondent Gloria, as it appeared that she was already residing in Central Luzon and her absence was detrimental to the early termination of the proceedings.

On May 25, 1979, administrator Cuyos executed a Deed of Absolute Sale[13] over the six parcels of land constituting the intestate estate of the late Evaristo Cuyos in favor of Columba for a consideration of the sum of ₱36,000.00.

Sometime in February 1998, the heirs of Evaristo Cuyos, namely: Gloria Cuyos-Talian, Patrocenia Cuyos-Mijares, Numeriano Cuyos and Enrique Cuyos, represented by their attorney-in-fact, Salud Cuyos (respondents), allegedly learned that Tax Declaration Nos. 000725, 000728, 000729, 000730, 000731 and 000732, which were all in the name of their late mother Agatona Arrogante, were canceled and new Tax Declaration Nos., namely, 20-14129, 20-14130, 20-141131, 20-14132, 2014133 and 20-14134, were issued in Columba's name; and that later on, Original Certificates of Titles covering the estate of Evaristo Cuyos were issued in favor of Columba; that some of these parcels of land were subsequently transferred to the names of spouses Renato C. Benatiro and Rosie M. Benatiro, son and daughter-in-law, respectively, of petitioners Gorgonio and Columba, for which transfer certificates of title were subsequently issued; that they subsequently discovered the existence of the assailed CFI Order dated December 16, 1976 and the Deed of Absolute Sale dated May 25, 1979.

Respondents filed a complaint against petitioner Gorgonio Benatiro before the Commission on the Settlement of Land

---

[12] *Id*. at 78.

[13] *Rollo*, pp. 79-80.

Problems (COSLAP) of the Department of Justice, which on June 13, 2000 dismissed the case for lack of jurisdiction.[14]

Salud Cuyos brought the matter for conciliation and mediation at the *barangay* level, but was unsuccessful.[15]

On July 16, 2001, Salud Cuyos, for herself and in representation[16] of the other heirs of Evaristo Cuyos, namely: Gloria, Patrocenia, Numeriano,[17] and Enrique, filed with the CA a petition for annulment of the Order dated December 16, 1976 of the CFI of Cebu, Branch XI, in SP No. 24-BN under Rule 47 of the Rules of Court. They alleged that the CFI Order dated December 16, 1976 was null and void and of no effect, the same being based on a Commissioner's Report, which was patently false and irregular; that such report practically deprived them of due process in claiming their share of their father's estate; that Patrocenia Cuyos-Mijares executed an affidavit, as well as the unnotarized statement of Gloria stating that no meeting ever took place for the purpose of discussing how to dispose of the estate of their parents and that they never received any payment from the supposed sale of their share in the inheritance; that the report was done in close confederacy with their co-heir Columba, who stood to be benefited by the Commissioner's recommendation, should the same be approved by the probate court; that since the report was a falsity, any order proceeding therefrom was invalid; that the issuance of the certificates of titles in favor of respondents were tainted with fraud and irregularity, since the CFI which issued the assailed order did not appear to have been furnished a copy of the Deed of Absolute Sale; that the CFI was not in *custodia legis* of the consideration of the sale, as directed in its Order so that it could divide the remainder of the consideration equally among the heirs after paying all the administration expenses and estate taxes; that the intestate case had not yet been terminated as the last order

---

[14] CA *rollo*, p. 62.

[15] *Id.* at 63.

[16] CA *rollo*, pp. 24-26; Special Power of Attorney.

[17] Refused to sign the Special Power of Attorney.

found relative to the case was the appointment of Lope as administrator vice Gloria; that they never received their corresponding share in the inheritance; and that the act of petitioners in manifest connivance with administrator Lope amounted to a denial of their right to the property without due process of law, thus, clearly showing that extrinsic fraud caused them to be deprived of their property.

Herein petitioners contend that respondents' allegation that they discovered the assailed order dated December 16, 1976 only in February 1998 was preposterous, as respondents were represented by counsel in the intestate proceedings; thus, notice of Order to counsel was notice to client; that this was only a ploy so that they could claim that they filed the petition for annulment within the statutory period of four (4) years; that they have been in possession of the six parcels of land since May 25, 1979 when the same was sold to them pursuant to the assailed Order in the intestate proceedings; that no extrinsic fraud attended the issuance of the assailed order; that Numeriano executed an affidavit in which he attested to having received his share of the sale proceeds on May 18, 1988; that respondents were estopped from assailing the Order dated December 16, 1976, as it had already attained the status of finality.

On July 18, 2003, the CA granted the petition and annulled the CFI order, the dispositive portion of which reads:

> FOR ALL THE FOREGOING REASONS, the instant petition is hereby GRANTED. Accordingly, the Order issued by the Court of First Instance of Cebu Branch XI dated December 16, 1976 as well as the Certificates of Title issued in the name of Columba Cuyos-Benatiro and the subsequent transfer of these Titles in the name of spouses Renato and Rosie Benatiro are hereby ANNULLED and SET ASIDE. Further, SP Proc. Case No. 24-BN is hereby ordered reopened and proceedings thereon be continued.[18]

The CA declared that the ultimate fact that was needed to be established was the veracity and truthfulness of the Commissioner's Report, which was used by the trial court as its basis for issuing

---

[18] *Rollo*, p. 39.

the assailed Order. The CA held that to arrive at an agreement, there was a need for all the concerned parties to be present in the conference; however, such was not the scenario since in their separate sworn statements, the compulsory heirs of the decedent attested to the fact that no meeting or conference ever happened among them; that although under Section 3(m), Rule 133 on the Rules of Evidence, there is a presumption of regularity in the performance of an official duty, the same may be contradicted and overcome by other evidence to prove the contrary.

The CA noted some particulars that led it to conclude that the conference was not held accordingly, to wit: (1) the Commissioner's Report never mentioned the names of the heirs who were present in the alleged conference but only the names of those who were absent, when the names of those who were present were equally essential, if not even more important, than the names of those who were absent; (2) the Report also failed to include any proof of conformity to the agreement from the attendees, such as letting them sign the report to signify their consent as regards the agreed mechanisms for the estate's settlement; (3) there was lack or absence of physical evidence attached to the report indicating that the respondents were indeed properly notified about the scheduled conference. The CA then concluded that due to the absence of the respondents' consent, the legal existence of the compromise agreement did not stand on a firm ground.

The CA further observed that although it appeared that notice of the report was given to Atty. Lepiten and Atty. Yray, lawyers of Gloria and Francisco Cuyos, respectively, the same cannot be taken as notice to the other heirs of Evaristo Cuyos; that a lawyer's authority to compromise cannot be simply presumed, since what was required was the special authority to compromise on behalf of his client; that a compromise agreement entered into by a person not duly authorized to do so by the principal is void and has no legal effect, citing *Quiban v. Butalid*;[19] that

---

[19] G.R. No. 90974, August 27, 1990, 189 SCRA 107.

being a void compromise agreement, the assailed Order had no legal effect.

Thus, the CA ruled that the Certificates of Titles obtained by herein petitioners were procured fraudulently; that the initial transfer of the properties to Columba Cuyos-Benatiro by virtue of a Deed of Absolute Sale executed by Lope Cuyos was clearly defective, since the compromise agreement which served as the basis of the Deed of Absolute Sale was void and had no legal effect.

The CA elaborated that there was no showing that Columba paid the sum of ₱36,000.00 to the administrator as consideration for the sale, except for the testimony of Numeriano Cuyos admitting that he received his share of the proceeds but without indicating the exact amount that he received; that even so, such alleged payment was incomplete and was not in compliance with the trial court's order for the administratix to execute the deed of sale covering all properties of the estate in favor of Columba Cuyos-Benatiro after the payment to the administratrix of the sum of ₱36,000.00; that said sum of money shall remain in *custodia legis*, but after all the claims and administration expenses and the estate taxes shall have been paid for, the remainder shall, upon order of the Court, be divided equally among the heirs.

Moreover, the CA found that the copy of the Deed of Sale was not even furnished the trial court nor was said money placed under *custodia legis* as agreed upon; that the Certification dated December 9, 1998 issued by the Clerk of Court of Cebu indicated that the case had not yet been terminated and that the last Order in the special proceeding was the appointment of Lope Cuyos as the new administrator of the estate; thus, the transfer of the parcels of land, which included the execution of the Deed of Absolute Sale, cancellation of Tax Declarations and the issuance of new Tax Declarations and Transfer Certificates of Title, all in favor of petitioners, were tainted with fraud. Consequently, the CA concluded that the compromise agreement, the certificates of title and the transfers made by petitioners through fraud cannot be made a legal basis of their ownership over the properties,

since to do so would result in enriching them at the expense of the respondents; and that it was also evident that the fraud attendant in this case was one of extrinsic fraud, since respondents were denied the opportunity to fully litigate their case because of the scheme utilized by petitioners to assert their claim.

Hence, herein petition raising the following issues:

> Whether or not annulment of order under Rule 47 of the Rules of Court was a proper remedy where the aggrieved party had other appropriate remedies, such as new trial, appeal, or petition for relief, which they failed to take through their own fault.
>
> Whether or not the Court of Appeals misapprehended the facts when it annulled the 24 year old Commissioner's Report of the Clerk of Court — an official act which enjoys a strong presumption of regularity — based merely on belated allegations of irregularities in the performance of said official act.
>
> Whether or not upon the facts as found by the Court of Appeals in this case, extrinsic fraud existed which is a sufficient ground to annul the lower court's order under Rule 47 of the Rules of Court.[20]

Subsequent to the filing of their petition, petitioners filed a Manifestation that they were in possession of affidavits of waiver and desistance executed by the heirs of Lope Cuyos[21] and respondent Patrocenia Cuyos-Mijares[22] on February 17, 2004 and December 17, 2004, respectively. In both affidavits, the affiants stated that they had no more interest in prosecuting/ defending the case involving the settlement of the estate, since the subject estate properties had been bought by their late sister Columba, and they had already received their share of the purchase price. Another heir, respondent Numeriano Cuyos, had also earlier executed an Affidavit[23] dated December 13, 2001, stating that the subject estate was sold to Columba and that she had

---

[20] *Rollo,* pp. 10-11.

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

[22] *Id.* at 123.

[23] *Id.* at 85.

already received her share of the purchase price on May 18, 1988. In addition, Numeriano had issued a certification[24] dated May 18, 1988, which was not refuted by any of the parties, that he had already received ₱4,000.00 in payment of his share, which could be the reason why he refused to sign the Special Power of Attorney supposedly in favor of Salud Cuyos for the filing of the petition with the CA.

The issue for resolution is whether the CA committed a reversible error in annulling the CFI Order dated December 16, 1976, which approved the Commissioner's Report embodying the alleged compromise agreement entered into by the heirs of Evaristo and Agatona Arrogante Cuyos.

We rule in the negative.

The remedy of annulment of judgment is extraordinary in character[25] and will not so easily and readily lend itself to abuse by parties aggrieved by final judgments. Sections 1 and 2 of Rule 47 impose strict conditions for recourse to it, *viz*.:

> Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.
>
> Section 2. *Grounds for annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Although Section 2 of Rule 47 of the Rules of Court provides that annulment of a final judgment or order of an RTC may be based "only on the grounds of extrinsic fraud and lack of

---

[24] *Id*. at 86.

[25] *Ramos v. Combong, Jr.*, G.R. No. 144273, October 20, 2005, 473 SCRA 499, 504.

jurisdiction," jurisprudence recognizes denial of due process as additional ground therefor.[26]

An action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character.[27] Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party.[28] Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[29]

While we find that the CA correctly annulled the CFI Order dated December 16, 1976, we find that it should be annulled not on the ground of extrinsic fraud, as there is no sufficient evidence to hold Atty. Taneo or any of the heirs guilty of fraud, but on the ground that the assailed order is void for lack of due process.

---

[26] *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, G.R. No. 168882, January 31, 2007, 513 SCRA 662, 668 citing *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 514; *Alaban v. Court of Appeals*, G.R. No. 156021, September 23, 2005, 470 SCRA 697, 707; *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, G.R. No. 149992, August 20, 2004, 437 SCRA 121, 131; *Salonga v. Court of Appeals*, G.R. No. 111478, March 13, 1997, 269 SCRA 534, 542; *Pinlac v. Court of Appeals*, G.R. No. 91486, January 19, 2001, 349 SCRA 635, 650; *Heirs of Pael v. Court of Appeals*, G.R. No. 133547, February 10, 2000, 325 SCRA 341, 358; *Lapulapu Development & Housing Corporation v. Risos*, G.R. No. 118633, September 6, 1996, 261 SCRA 517, 524; *Regidor v. Court of Appeals*, G.R. No. 78115, March 5, 1993, 219 SCRA 530, 534.

[27] RULES OF COURT, Rule 47, Section 2.

[28] *Alba v. Court of Appeals*, G.R. No. 164041, July 29, 2005, 465 SCRA 495, 508.

[29] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274.

Clerk of Court Taneo was appointed to act as Commissioner to effect the agreement of the heirs and to prepare the project of partition for submission and approval of the court. Thus, it was incumbent upon Atty. Taneo to set a time and place for the first meeting of the heirs. In his Commissioner's Report, Atty. Taneo stated that he caused the appearance of all the heirs of Evaristo Cuyos and Agatona Arrogante Cuyos in the place, where the subject properties were located for settlement, by sending them subpoenae supplemented by telegrams for them to attend the conference scheduled on February 28 to 29, 1976. It was also alleged that out of the nine heirs, only six attended the conference; however, as the CA aptly found, the Commissioner did not state the names of those present, but only those heirs who failed to attend the conference, namely: respondents Gloria, Salud and Enrique who, as stated in the Report, based on the return of service, could not be located in their respective given addresses.

However, there is nothing in the records that would establish that the alleged subpoenae, supplemented by telegrams, for the heirs to appear in the scheduled conference were indeed sent to the heirs. In fact, respondent Patrocenia Cuyos-Mijares, one of the heirs, who was presumably present in the conference, as she was not mentioned as among those absent, had executed an affidavit[30] dated December 8, 1998 attesting, to the fact that she was not called to a meeting nor was there any telegram or notice of any meeting received by her. While Patrocenia had executed on December 17, 2004 an Affidavit of Waiver and Desistance[31] regarding this case, it was only for the reason that the subject estate properties had been bought by their late sister Columba, and that she had already received her corresponding share of the purchase price, but there was nothing in the affidavit that retracted her previous statement that she was not called to a meeting. Respondent Gloria also made an unnotarized statement[32]

---

[30] CA *rollo*, p. 64.

[31] *Id.* at 123.

[32] CA *rollo*, p. 67.

that there was no meeting held. Thus, the veracity of Atty. Taneo's holding of a conference with the heirs was doubtful.

Moreover, there was no evidence showing that the heirs indeed convened for the purpose of arriving at an agreement regarding the estate properties, since they were not even required to sign anything to show their attendance of the alleged meeting. In fact, the Commissioner's Report, which embodied the alleged agreement of the heirs, did not bear the signatures of the alleged attendees to show their consent and conformity thereto.

It bears stressing that the purpose of the conference was for the heirs to arrive at a compromise agreement over the estate of Evaristo Cuyos. Thus, it was imperative that all the heirs must be present in the conference and be heard to afford them the opportunity to protect their interests. Considering that no separate instrument of conveyance was executed among the heirs embodying their alleged agreement, it was necessary that the Report be signed by the heirs to prove that a conference among the heirs was indeed held, and that they conformed to the agreement stated in the Report.

Petitioners point out that the Commissioner was an officer of the court and a disinterested party and that, under Rule 133, Section 3(m) of the Rules on Evidence, there is a presumption that official duty has been regularly performed.

While, under the general rule, it is to be presumed that everything done by an officer in connection with the performance of an official act in the line of his duty was legally done, such presumption may be overcome by evidence to the contrary. We find the instances mentioned by the CA, such as absence of the names of the persons present in the conference, absence of the signatures of the heirs in the Commissioner's Report, as well as absence of evidence showing that respondents were notified of the conference, to be competent proofs of irregularity that rebut the presumption.

Thus, we find no reversible error committed by the CA in ruling that the conference was not held accordingly and in annulling the assailed order of the CFI.

Petitioners attached a Certification[33] dated August 7, 2003 issued by the Officer In Charge (OIC), Branch Clerk of Court of the RTC, Branch 11, to show that copies of the Commissioner's Report were sent to all the heirs, except Salud and Enrique, as well as to Attys. Lepiten and Yray as enumerated in the Notice found at the lower portion of the Report with the accompanying registry receipts.[34]

In *Cua v. Vargas*,[35] in which the issue was whether heirs were deemed constructively notified of and bound by an extra-judicial settlement and partition of the estate, regardless of their failure to participate therein, when the extra-judicial settlement and partition has been duly published, we held:

The procedure outlined in Section 1 of Rule 74 is an *ex parte* proceeding. The rule plainly states, however, that persons who do not participate or had no notice of an extrajudicial settlement will not be bound thereby. It contemplates a notice that has been sent out or issued before any deed of settlement and/or partition is agreed upon (*i.e.*, a notice calling all interested parties to participate in the said deed of extrajudicial settlement and partition), and not after such an agreement has already been executed as what happened in the instant case with the publication of the first deed of extrajudicial settlement among heirs.

The publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is geared for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. In this connection, the records of the present case confirm that respondents never signed either of the settlement documents, having discovered their existence only shortly before the filing of the present complaint. Following Rule 74, these extrajudicial settlements do not bind respondents, and the partition made without their knowledge and consent is invalid insofar as they are concerned.[36] (Emphasis supplied)

---

[33] *Rollo*, Annex "H", p. 64.

[34] *Id.* at 75-76.

[35] G.R. No. 156536, October 31, 2006, 506 SCRA 374.

[36] *Id.* at 384-385.

Applying the above-mentioned case by analogy, what matters is whether the heirs were indeed notified before the compromise agreement was arrived at, which was not established, and not whether they were notified of the Commissioner's Report embodying the alleged agreement afterwards.

We also find nothing in the records that would show that the heirs were called to a hearing to validate the Report. The CFI adopted and approved the Report despite the absence of the signatures of all the heirs showing conformity thereto. The CFI adopted the Report despite the statement therein that only six out of the nine heirs attended the conference, thus, effectively depriving the other heirs of their chance to be heard. The CFI's action was tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law. We find that the assailed Order dated December 16, 1976, which approved a void Commissioner's Report, is a void judgment for lack of due process.

We are not persuaded by petitioners' contentions that all the parties in the intestate estate proceedings in the trial court were duly represented by respective counsels, namely, Atty. Lepiten for petitioners-heirs and Atty. Yray for the oppositors-heirs; that when the heirs agreed to settle the case amicably, they manifested such intention through their lawyers, as stated in the Order dated January 30, 1973; that an heir in the settlement of the estate of a deceased person need not hire his own lawyer, because his interest in the estate is represented by the judicial administrator who retains the services of a counsel; that a judicial administrator is the legal representative not only of the estate but also of the heirs, legatees, and creditors whose interest he represents; that when the trial court issued the assailed Order dated December 16, 1976 approving the Commissioner's Report, the parties' lawyers were duly served said copies of the Order on December 21, 1976 as shown by the Certification[37] dated August 7, 2003 of the RTC OIC, Clerk of Court; that notices to lawyers should be considered notices to the clients, since, if a party is represented by counsel, service of notices of orders

[37] *Rollo,* Annex "H", p. 64.

and pleadings shall be made upon the lawyer; that upon receipt of such order by counsels, any one of the respondents could have taken the appropriate remedy such as a motion for reconsideration, a motion for new trial or a petition for relief under Rule 38 at the proper time, but they failed to do so without giving any cogent reason for such failure.

While the trial court's order approving the Commissioner's Report was received by Attys. Yray and Lepiten, they were the lawyers of Gloria and Francisco, respectively, but not the lawyers of the other heirs. As can be seen from the pleadings filed before the probate court, Atty. Lepiten was Gloria's counsel when she filed her Petition for letters of administration, while Atty. Yray was Francisco's lawyer when he filed his opposition to the petition for letters of administration and his Motion to Order administrarix Gloria to render an accounting and for the partition of the estate. Thus, the other heirs who were not represented by counsel were not given any notice of the judgment approving the compromise. It was only sometime in February 1998 that respondents learned that the tax declarations covering the parcels of land, which were all in the name of their late mother Agatona Arrogante, were canceled; and new Tax Declarations were issued in Columba's name, and Original Certificates of Titles were subsequently issued in favor of Columba. Thus, they could not have taken an appeal or other remedies.

Considering that the assailed Order is a void judgment for lack of due process of law, it is no judgment at all. It cannot be the source of any right or of any obligation.[38]

In *Nazareno v. Court of Appeals*,[39] we stated the consequences of a void judgment, thus:

A void judgment never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the

---

[38] *Metropolitan Bank & Trust Company v. Alejo*, 417 Phil. 303, 316, 318 (2001).

[39] G.R. No. 111610, February 27, 2002, 378 SCRA 28. (2002).

aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed non-existent. Thus, there was no effective or operative judgment to appeal from. In *Metropolitan Waterworks & Sewerage System vs. Sison*, this Court held that:

> x x x [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial.
>
> Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[40] (Emphasis supplied)

The CFI's order being null and void, it may be assailed anytime, collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches.[41] Consequently, the compromise agreement and the Order approving it must be declared null and void and set aside.

We find no merit in petitioners' claim that respondents are barred from assailing the judgment after the lapse of 24 years from its finality on ground of laches and estoppel.

---

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

[41] *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, *supra* note 26, at 670.

Section 3, Rule 47 of the Rules of Court provides that an action for annulment of judgment based on extrinsic fraud must be filed within four years from its discovery and, if based on lack of jurisdiction, before it is barred by laches or estoppel.

The principle of laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[42]

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances.[43] The question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.[44]

In this case, respondents learned of the assailed order only sometime in February 1998 and filed the petition for annulment of judgment in 2001. Moreover, we find that respondents' right to due process is the paramount consideration in annulling the assailed order. It bears stressing that an action to declare the nullity of a void judgment does not prescribe.[45]

---

[42] *Chua v. Court of Appeals*, G.R. No. 125837, October 6, 2004, 440 SCRA 121, 135.

[43] *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 732 (2002).

[44] *Ang Ping v. Court of Appeals*, 369 Phil. 607, 616 (1999).

[45] See *Paluwagan ng Bayan Savings Bank v. King*, G.R. No. 78252, April 12, 1989, 172 SCRA 60, 69 citing *Ang Lam v. Rosillosa and Santiago*, 86 Phil. 447, 45 (1950); *Vda de Macoy v. Court of Appeals*, G.R. No. 95871, February 13, 1992, 206 SCRA 244, 252.

Finally, considering that the assailed CFI judgment is void, it has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Hence, the execution of the Deed of Sale by Lope in favor of Columba pursuant to said void judgment, the issuance of titles pursuant to said Deed of Sale, and the subsequent transfers are void *ab initio*. No reversible error was thus committed by the CA in annulling the judgment.

WHEREFORE, the petition is *DENIED* and the Decision dated July 18, 2003 and Resolution dated November 13, 2003 of the Court of Appeals are *AFFIRMED*. The Regional Trial Court, Branch XI, Cebu and the Heirs of Evaristo Cuyos are *DIRECTED* to proceed with SP Proceedings Case No. 24-BN for the settlement of the Estate of Evaristo Cuyos.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166886. July 30, 2008]

MATTEL, INC., *petitioner, vs.* **EMMA FRANCISCO, Director-General of the Intellectual Property Office, HON. ESTRELLITA B. ABELARDO, Director of the Bureau of Legal Affairs (IPO), and JIMMY UY,** *respondents.*[*]

---

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

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; ADMISSION AGAINST INTEREST; RATIONALE. — Uy's admission in his Comment and Memorandum of non-compliance with the foregoing requirements is a judicial admission and an admission against interest combined. A judicial admission binds the person who makes the same. In the same vein, an admission against interest is the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration is true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.

2. ID.; EXERCISE OF POWER OF JUDICIAL REVIEW; LIMITED TO ACTUAL CASES AND CONTROVERSIES. — In the present case, Mattel is seeking a ruling on whether Uy's "Barbie" trademark is confusingly similar to it's (Mattel's) "Barbie" trademark. Given Uy's admission that he has effectively abandoned or withdrawn any rights or interest in his trademark by his non-filing of the required Declaration of Actual Use (DAU), there is no more actual controversy, or no useful purpose will be served in passing upon the merits of the case. It would be unnecessary to rule on the trademark conflict between the parties. **A ruling on the matter would practically partake of a mere advisory opinion, which falls beyond the realm of judicial review. The exercise of the power of judicial review is limited to actual cases and controversies. Courts have no authority to pass upon issues through advisory opinions or to resolve hypothetical or feigned problems.** It cannot be gainsaid that for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.

3. ID.; ID.; ID.; EXCEPTIONS. — Admittedly, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.

APPEARANCES OF COUNSEL

Del Rosario Bagamasbas & Raboca for petitioner.
Narciso A. Manantan for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated June 11, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 80480 and the CA Resolution[2] dated January 19, 2005 which denied petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

On November 14, 1991, Jimmy A. Uy (Uy) filed a trademark application Serial No. 78543[3] with the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) for registration of the trademark "BARBIE" for use on confectionery products,

---

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. (now Presiding Justice) and concurred in by Associate Justices Rebecca De Guia-Salvador and Jose C. Reyes, Jr., CA *rollo*, p. 437.

[2] CA *rollo*, p. 495.

[3] *Rollo*, p. 70.

such as milk, chocolate, candies, milkbar and chocolate candies in Class 30 of the International Classification of Goods. The trademark application was published in the March-April 1993 issue of the BPTTT Official Gazette, Vol. VI, No. 2, which was released for circulation on May 31, 1993.

On July 19, 1993, Mattel, Inc. (Mattel), a corporation organized under the laws of the State of Delaware, United States of America, filed a Notice of Opposition[4] against Uy's "Barbie" trademark as the latter was confusingly similar to its trademark on dolls, doll clothes and doll accessories, toys and other similar commercial products. It was docketed as Inter Partes Case No. 3898.

On August 26, 1993, Uy filed his Answer[5] to the Notice of Opposition, denying the allegations therein and claiming that there is no similarity between the two goods.

While the case was pending, Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code of the Philippines was enacted and took effect on January 1, 1998. The BPTTT was abolished and its functions transferred to the newly created Intellectual Property Office (IPO).

On May 18, 2000, public respondent Estrellita B. Abelardo, the Director of the Bureau of Legal Affairs, IPO, rendered a Decision[6] dismissing Mattel's opposition and giving due course to Uy's application for the registration of the trademark "Barbie" used on confectionery products. The Director held that there was no confusing similarity between the two competing marks because the goods were non-competing or unrelated.

On June 5, 2000, Mattel filed a Motion for Reconsideration.[7] On May 27, 2002, the Director of the Bureau of Legal Affairs, IPO issued a Resolution[8] denying Mattel's Motion for Reconsideration.

---

[4] *Rollo*, p. 73.

[5] *Id.* at 78.

[6] CA *rollo*, p. 55.

[7] CA *rollo*, p. 63.

[8] *Id.* at 86.

On June 24, 2002, Mattel filed an Appeal Memorandum[9] with the Office of the Director General, IPO. Despite due notice, no comment was submitted by Uy. Thus, in an Order[10] dated October 7, 2002, Uy was deemed to have waived his right to file a comment on the appeal.

On September 3, 2003, public respondent Emma C. Francisco, the Director General, rendered a Decision[11] denying the appeal on the ground that there was no proof on record that Mattel had ventured into the production of chocolates and confectionery products under the trademark "Barbie" to enable it to prevent Uy from using an identical "Barbie" trademark on said goods; that the records were bereft of the fact that the Director of the Bureau of Trademarks (BOT) had already declared the subject trademark application abandoned due to the non-filing of the Declaration of Actual Use (DAU) by Uy.

On September 12, 2003, Mattel filed a Motion for New Trial[12] on the ground of newly discovered evidence — *i.e.*, Mattel's Trademark Application Serial No. 4-1997-124327 for registration of the trademark "Barbie" for use on "confectioneries, sweets and chewing gum, none being medicated, sweetmeats included in Class 30, chocolate, popcorn, chocolate biscuits (other than biscuits for animals), pastries, preparations for cereals for food for human consumption, ices, ice creams" under Class 30 of the International Classification of Goods — was unopposed after publication in Vol. VI No. 3 of the IPO Official Gazette which was released on June 20, 2003.

On October 22, 2003, the Director General issued an Order[13] denying the motion for new trial.

---

[9] *Id.* at 90.

[10] *Id.* at 389.

[11] *Id.* at 393.

[12] *Id.* at 417.

[13] CA *rollo*, p. 427.

On November 12, 2003, Mattel filed a Petition for Review[14] with the CA. Again, despite due notice, no comment on the petition was filed by Uy. Thus, in a Resolution[15] dated April 20, 2004, the CA resolved to dispense with the filing of the comment and considered the petition submitted for resolution/ decision sans comment.

On June 11, 2004, the CA rendered a Decision[16] affirming the decision of the Director General.

On July 15, 2004, Mattel filed a Motion for Reconsideration[17] but it was denied by the CA in a Resolution[18] dated January 19, 2005.

Hence, the present petition raising the following issues:

I.

WHETHER OR NOT IT IS GRAVE ERROR ON THE PART OF THE HON. COURT OF APPEALS TO RULE THAT "Dolls, Doll Clothes, and Doll Accessories, Costumes, Toys and other similar commercial products" *VIS-À-VIS* "Confectionery products, namely, milk chocolate, candies, milkbar, and chocolate candies" ARE UNRELATED SUCH THAT USE OF IDENTICAL TRADEMARKS IS UNLIKELY TO CAUSE CONFUSION IN THE MINDS OF THE PURCHASING PUBLIC.

II.

WHETHER OR NOT IT IS GRAVE ERROR ON THE PART OF THE HON. COURT OF APPEALS TO SUSTAIN THE FINDINGS OF THE DIRECTOR GENERAL OF THE INTELLECTUAL PROPERTY OFFICE (IPO) THAT IT IS PREMATURE TO CONCLUDE THAT APPLICATION SERIAL NO. 78543 BE DEEMED WITHDRAWN FOR FAILURE TO FILE THE DECLARATION OF ACTUAL USE (DAU), CONSIDERING THAT SUCH DECLARATION IS THE PREROGATIVE OF THE DIRECTOR OF TRADEMARKS.

---

[14] *Id*. at 2.

[15] *Id*. at 437.

[16] *Id*. at 439.

[17] *Id*. at 451.

[18] *Id*. at 495.

III.

WHETHER OR NOT PRIVATE-RESPONDENT SHOULD BE PRESUMED TO HAVE INTENDED TO CASH-IN AND RIDE ON THE GOODWILL AND WIDESPREAD RECOGNITION OF THE PETITIONER'S MARK CONSIDERING THAT PRIVATE RESPONDENT ADOPTED A MARK THAT IS EXACTLY IDENTICAL TO PETITIONER'S MARK IN SPELLING AND STYLE.

IV.

WHETHER OR NOT TRADEMARK APPLICATION NO. 4-1997-124327 SHOULD BE CONSIDERED "NEWLY-DISCOVERED EVIDENCE."[19]

Mattel argues that its products are items related to Uy's products; hence, identical trademarks should not be used where the possibility of confusion as to source or origin of the product is certain; that the Director General of the IPO has the power to act on a pending trademark application considered as "withdrawn" for failure to file the DAU; that by adopting an exactly identical mark, in spelling and style, Uy should be presumed to have intended to cash in or ride on the goodwill and widespread recognition enjoyed by Mattel's mark; that Mattel should be allowed to introduce Trademark Application Serial No. 4-1997-124327 as "newly discovered evidence."

On the other hand, Uy submits that the case has become moot and academic since the records of the IPO will show that no DAU was filed on or before December 1, 2001; thus, he is deemed to have abandoned his trademark application for failure to comply with the mandatory filing of the DAU.

For its part, the OSG contends that the petition primarily raised factual issues which are not proper subject of a petition for review under Rule 45 of the Rules of Court and that, at any rate, Mattel failed to establish any grave error on the part of respondent public officials which will warrant the grant of the present petition. It submits that confectionery products, namely: milk chocolate, candies, milkbar and chocolate candies, on the

---

[19] CA *rollo*, p. 29.

one hand; and dolls, doll clothes and doll accessories, costumes, toys and other similar commercial products, on the other hand, are products which are completely unrelated to one another; that withdrawal of pending application for failure to file a DAU must first be the subject of an administrative proceeding before the Director of Trademarks; that Mattel's Trademark Application Serial No. 4-1997-124327 cannot be considered as newly discovered evidence since said trademark application was filed only on September 3, 1997, or more than two years after the case had been deemed submitted for decision.

The instant case has been rendered moot and academic.

Uy's declaration in his Comment and Memorandum before this Court that he has not filed the DAU as mandated by pertinent provisions of R.A. No. 8293 is a judicial admission that he has effectively abandoned or withdrawn any right or interest in his trademark.

Section 124.2 of R.A. No. 8293 provides:

> The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. **Otherwise, the applicant shall be refused or the marks shall be removed from the Register by the Director**. (Emphasis supplied)

Moreover, Rule 204 of the Rules and Regulations on Trademarks provides:

> Declaration of Actual Use. The Office will not require any proof of use in commerce in the processing of trademark applications. However, **without need of any notice from the Office,** all applicants or registrants, shall file a declaration of actual use of the mark with evidence to that effect within three years, without possibility of extension, from the filing date of the application. **Otherwise,** the application shall be refused or **the mark shall be removed from the register by the Director *motu proprio***. (Emphasis supplied)

Meanwhile, Memorandum Circular No. BT 2K1-3-04 dated March 29, 2001[20] of the IPO provides:

> 2. For pending applications prosecuted under R.A. 166 we distinguish as follows:
>
> 2.1. Based on use – **must submit DAU and evidence of use on or before December 1, 2001**, subject to a single six (6) month extension. (Sec. 3.2, Final Provisions of the Trademark Regulations, R.A. 8293, IPO Fee Structure and MC. No. BT Y2K-8-02)
>
> x x x x x x x x x[21]

Uy's admission in his Comment and Memorandum of non-compliance with the foregoing requirements is a judicial admission and an admission against interest[22] combined. A judicial admission binds the person who makes the same.[23] In the same vein, an admission against interest is the best evidence which affords the greatest certainty of the facts in dispute.[24] The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration is true.[25] Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.[26]

In the present case, Mattel is seeking a ruling on whether Uy's "Barbie" trademark is confusingly similar to it's (Mattel's)

---

[20] *Rollo*, p. 3489.

[21] *Id*.

[22] Section 26, Rule 130 of the Rules of Court provides: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

[23] *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004); *Noda v. Cruz-Arnaldo*, No. 57322, June 22, 1987, 151 SCRA 227, 232.

[24] *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 428 (2003); *Yuliongsiu v. PNB*, 130 Phil. 575, 580 (1968).

[25] *Republic v. Bautista*, G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; *Bon v. People*, G.R. No. 152160, January 13, 2004, 419 SCRA 101, 111.

[26] *Rufina Patis Factory v. Alusitain, supra*, note 23; Part I, VII, V. Francisco, The Revised Rules of Court in the Philippines, p. 305 (1997).

"Barbie" trademark. Given Uy's admission that he has effectively abandoned or withdrawn any rights or interest in his trademark by his non-filing of the required DAU, there is no more actual controversy, or no useful purpose will be served in passing upon the merits of the case. It would be unnecessary to rule on the trademark conflict between the parties. **A ruling on the matter would practically partake of a mere advisory opinion, which falls beyond the realm of judicial review. The exercise of the power of judicial review is limited to actual cases and controversies. Courts have no authority to pass upon issues through advisory opinions or to resolve hypothetical or feigned problems**.[27]

It cannot be gainsaid that for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.[28] Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[29]

Admittedly, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the

---

[27] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 426 (1998).

[28] *Republic v. Tan*, G.R. No. 145255, March 30, 2004, 426 SCRA 485, 492-493.

[29] *Id*.

public; and *fourth*, the case is capable of repetition yet evading review.[30]

Thus, in *Constantino v. Sandiganbayan (First Division)*,[31] Constantino, a public officer, and his co-accused, Lindong, a private citizen, filed separate appeals from their conviction by the *Sandiganbayan* for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. While Constantino died during the pendency of his appeal, the Court still ruled on the merits thereof, considering the exceptional character of the appeals of Constantino and Lindong in relation to each other; that is, the two petitions were so intertwined that the absolution of the deceased Constantino was determinative of the absolution of his co-accused Lindong.

In *Public Interest Center, Inc. v. Elma*,[32] the petition sought to declare as null and void the concurrent appointments of Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. While Elma ceased to hold the two offices during the pendency of the case, the Court still ruled on the merits thereof, considering that the question of whether the PCGG Chairman could concurrently hold the position of CPLC was one capable of repetition.

In *David v. Arroyo*,[33] seven petitions for *certiorari* and prohibition were filed assailing the constitutionality of the declaration of a state of national emergency by President Gloria Macapagal-Arroyo. While the declaration of a state of national

---

[30] *Constantino v. Sandiganbayan (First Division)*, G.R. Nos. 140655 & 154482, September 13, 2007, 533 SCRA 205, 219-220; *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, 213-214.

[31] *Supra*.

[32] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[33] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160.

emergency was already lifted during the pendency of the suits, this Court still resolved the merits of the petitions, considering that the issues involved a grave violation of the Constitution and affected the public interest. The Court also affirmed its duty to formulate guiding and controlling constitutional precepts, doctrines or rules, and recognized that the contested actions were capable of repetition.

In *Pimentel, Jr. v. Ermita*,[34] the petition questioned the constitutionality of President Gloria Macapagal-Arroyo's appointment of acting secretaries without the consent of the Commission on Appointments while Congress was in session. While the President extended *ad interim* appointments to her appointees immediately after the recess of Congress, the Court still resolved the petition, noting that the question of the constitutionality of the President's appointment of department secretaries in acting capacities while Congress was in session was one capable of repetition.

In *Atienza v. Villarosa*,[35] the petitioners, as Governor and Vice-Governor, sought for clarification of the scope of the powers of the Governor and Vice-Governor under the pertinent provisions of the Local Government Code of 1991. While the terms of office of the petitioners expired during the pendency of the petition, the Court still resolved the issues presented to formulate controlling principles to guide the bench, bar and the public.

In *Gayo v. Verceles*,[36] the petition assailing the dismissal of the petition for *quo warranto* filed by Gayo to declare void the proclamation of Verceles as Mayor of the Municipality of Tubao, La Union during the May 14, 2001 elections, became moot upon the expiration on June 30, 2004 of the contested term of office of Verceles. Nonetheless, the Court resolved the petition since the question involving the one-year residency requirement for those running for public office was one capable of repetition.

---

[34] G.R. No. 164978, October 13, 2005, 472 SCRA 587.

[35] G.R. No. 161081, May 10, 2005, 458 SCRA 385.

[36] G.R. No. 150477, February 28, 2005, 452 SCRA 504.

In *Albaña v. Commission on Elections,*[37] the petitioners therein assailed the annulment by the Commission on Elections of their proclamation as municipal officers in the May 14, 2001 elections. When a new set of municipal officers was elected and proclaimed after the May 10, 2004 elections, the petition was mooted but the Court resolved the issues raised in the petition in order to prevent a repetition thereof and to enhance free, orderly, and peaceful elections.

The instant case does not fall within the category of any of these exceptional cases in which the Court was persuaded to resolve moot and academic issues to formulate guiding and controlling constitutional principles, precepts, doctrines or rules for future guidance of both bench and bar. The issues in the present case call for an appraisal of factual considerations which are peculiar only to the transactions and parties involved in this controversy. The issues raised in this petition do not call for a clarification of any constitutional principle. Perforce, the Court dispenses with the need to adjudicate the instant case.

WHEREFORE, the petition is *DISMISSED* for being moot and academic.

No pronouncement as to costs.

SO ORDERED.

Quisumbing,[**] *Ynares-Santiago, Chico-Nazario,* and *Reyes, JJ.,* concur.

---

[37] G.R. No. 163302, July 23, 2004, 435 SCRA 98.

[**] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated May 19, 2008.

THIRD DIVISION

[G.R. No. 171435. July 30, 2008]

ANTHONY T. REYES, *petitioner, vs.* **PEARLBANK SECURITIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE. — Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

2. ID.; ID.; ID.; FINDINGS OF PROBABLE CAUSE FALL WITHIN THE JURISDICTION OF THE PROSECUTOR IN THE EXERCISE OF EXECUTIVE POWER. — These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion

of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice.

3. ID.; ID.; ID.; ID.; COURTS DO NOT REVERSE THE SECRETARY OF JUSTICE'S FINDINGS AND CONCLUSIONS ON THE MATTER OF PROBABLE CAUSE EXCEPT IN CLEAR CASES OF GRAVE ABUSE OF DISCRETION. — For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. The restraint exercised by this Court in interfering with the determination of probable cause by the prosecutor, unless there is grave abuse of discretion, is only consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, none of which are obtaining in the case now before us.

4. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED. — In *D.M. Consunji, Inc. v. Esguerra*, we defined grave abuse of discretion in this wise: By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised

in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

5. ID.; ID.; ID.; ID.; ID.; RIGHT TO PROSECUTE VESTS THE PROSECUTOR WITH DISCRETION OF WHETHER, WHAT AND WHOM TO CHARGE. — Suffice it to say that it is indubitably within the discretion of the prosecutor to determine who must be charged with what crime or for what offense. In *Webb v. De Leon* in which the petitioners questioned the non-inclusion of Alfaro in the Information for rape with homicide filed against them, despite Alfaro's alleged conspiratorial participation in the crime charged, this Court pronounced that: [T]he prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasboard of factors which are best appreciated by prosecutors x x x. While the right to equal protection of the law requires that litigants are treated in an equal manner by giving them the same rights under similar circumstances, it may not be perversely used to justify desistance by the authorities from prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged.

6. ID.; ID.; PREJUDICIAL QUESTION. — A ***prejudicial question*** is defined as one which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it that it determines the guilt or innocence of the accused; and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in

the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation in which a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

APPEARANCES OF COUNSEL

Poblador Bautista Reyes for petitioner.
Saulog De Leon Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, petitioner Anthony T. Reyes prays for the reversal of the 26 October 2005 Decision[1] and 7 February 2006 Resolution[2] of the Court of Appeals in "*Anthony T. Reyes v. Secretary of the Department of Justice and Pearlbank Securities, Inc.,*" docketed as CA-G.R. SP No. 90006, ruling that the Secretary of the Department of Justice (DOJ) did not commit grave abuse of discretion in finding probable cause to charge petitioner Reyes with the crime of falsification of commercial and private documents.

Pearlbank Securities, Inc. (PEARLBANK) is a domestic corporation engaged in the securities business.

Westmont Investment Corporation (WINCORP) is a domestic corporation operating as an investment house. Among the services rendered by WINCORP to its clients in the ordinary course of its business as an investment house is the arranging and brokering

[1] Penned by Associate Justice Eliezer R. de los Santos with the concurrence of Associate Justices Eugenio S. Labitoria and Jose C. Reyes; *Rollo*, pp. 69-82.

[2] *Rollo*, p. 85.

of loans. Petitioner Anthony T. Reyes was formerly the Vice President for Operations and Administration of WINCORP.[3]

PEARLBANK alleged that in March 2000, it received various letters from persons who invested in WINCORP demanding payment of their matured investments, which WINCORP failed to pay, threatening legal action. According to these investors, WINCORP informed them that PEARLBANK was the borrower of their investments. WINCORP alleged that it was unable to repay its investors because of the failure of its fund borrowers, one of which was PEARLBANK, to pay the loans extended to them by WINCORP. As proof of their claims, the investors presented Confirmation Advices,[4] Special Powers of Attorney and Certifications signed and issued to them by WINCORP.

The period covered by these Confirmation Advices was from 25 January 2000 to 3 April 2000, with said Confirmation Advices bearing the words "Borrower: PEARLBANK Securities, Inc."

PEARLBANK denied having any outstanding loan obligation with WINCORP or its investors.

In reaction to the accusations against it, PEARLBANK immediately wrote Antonio T. Ong, WINCORP President, demanding an explanation as to how and why PEARLBANK was made to appear to be involved in its transactions. According to PEARLBANK, it did not get any reply from WINCORP.

PEARLBANK alleged that WINCORP's acts of stating and making it appear in several Confirmation Advices, Special Powers of Attorney and Certifications that PEARLBANK was the borrower of funds from the lenders/investors of WINCORP constituted falsification of commercial and private documents.

While PEARLBANK admitted obtaining loans from WINCORP, it alleged that these accounts were settled by way

---

[3] From 1995 to November 2004.

[4] A Confirmation Advice is used by WINCORP to facilitate credit transactions. The Confirmation Advices subject of this case are standard forms with practically all the material details, such as the principal, interest rate, value date, maturity date, lender and borrower.

of an offsetting arrangement. Thus, the promissory notes executed by PEARLBANK covering such loans were allegedly all stamped "cancelled." It denied obtaining loans from WINCORP or its lenders/investors from the period 11 December 1998 to 18 January 1999 due to the fact that there was "no valid and effective grant of a credit facility" in favor of PEARLBANK during the said period.

On 3 April 2000, PEARLBANK served on WINCORP a final demand letter asking for a full and accurate accounting of the identities and investments of the lenders/investors and the alleged loan obligations of PEARLBANK, with the supporting records and documents including the purported Confirmation Advices.

WINCORP, however, still did not heed the demands of PEARLBANK and failed to produce the loan agreement documents it allegedly executed with the latter.

On 7 April 2000, PEARLBANK filed two complaints with the Securities and Exchange Commission (SEC) against Ong and several John Does for full and accurate accounting of the investments of WINCORP and of PEARLBANK's alleged loan obligations to WINCORP and/or its investors. The cases were docketed as SEC Cases No. 04-00-6590 and 04-00-6591.

On 6 September 2000, Juanita U. Tan, Treasurer of PEARLBANK, filed a complaint on behalf of PEARLBANK for **falsification by private individuals of commercial and private documents** before the DOJ. The case was docketed as I.S. No. 2000-1491. Named respondents in the complaint were the officers and directors of WINCORP, to wit: petitioner herein Anthony T. Reyes, Antonio T. Ong, Gilda C. Lucena,[5] Nemesio R. Briones, Loida C. Tamundong,[6] Eric R.G. Espiritu, and **John** or **Jane** Does.

In answer to the complaint of PEARLBANK in I.S. No. 2000-1491, WINCORP, through Ong, explained that among

---

[5] Chief Legal Officer and Assistant Corporate Secretary.

[6] Assistant Manager – Legal Department.

the services offered by WINCORP was the arranging and/or brokering of loans for clients. Upon application of PEARLBANK, WINCORP agreed to arrange and/or broker loans on behalf of the former. Thus, in a meeting of its Board of Directors on 28 November 1995, WINCORP approved a credit line in favor of PEARLBANK in the amount of ₱250M.

According to Ong, pursuant to this Credit Line Agreement, PEARLBANK was able to obtain, through the brokerage of WINCORP, loans from several lenders/investors in the total amount of ₱324,050,474.24 for which PEARLBANK issued promissory notes from 1995 to 1996. The Credit Line Agreement was renewed for another year or up to 25 October 1996. PEARLBANK made payments, leaving a balance of around ₱300M on the loan. On 28 April 1997, the Credit Line Agreement was amended and the credit line was increased from ₱250M to ₱850M. On 11 December 1998, PEARLBANK arranged with WINCORP to transact additional loans from lenders in the amount of ₱200M, the proceeds of which were deposited in the account of Farmix Fertilizers, Inc., a corporation wholly owned and/or controlled by Manuel Tankiansee and Juanita Uy Tan. Following the previous procedure, WINCORP prepared the promissory notes corresponding to the additional loans, totaling ₱200M, and forwarded said documents to PEARLBANK. WINCORP maintains, however, that the promissory notes were never returned. WINCORP issued the standard Confirmation Advices to the lenders of PEARLBANK for said loans. Although the promissory notes were stamped "terminated" or "cancelled," the renewal promissory notes were not sent back/returned by PEARLBANK to WINCORP.

From the foregoing, WINCORP asserted that PEARLBANK was accurately designated as the borrower from the lenders/investors. The Confirmation Advices, Special Powers of Attorney, and Certifications it issued to the lenders/investors, indicating PEARLBANK as the borrower, were prepared in good faith and in accordance with the records of WINCORP. Hence, the officers and directors named as respondents in I.S. No. 2000-1491 who prepared, signed, and reviewed such documents denied having falsified them.

On 2 January 2001, Ong, Lucena, Briones, Tamundong and Espiritu filed a Motion to Admit Attached Memorandum before the DOJ, asserting that the criminal complaint against them should be dismissed for lack of probable cause or suspended due to the existence of a prejudicial question involving the SEC cases.

On 18 June 2001, Prosecutor Estherbella N. Rances of the DOJ Task Force on Financial Fraud issued a Review Resolution recommending the filing of Informations for falsification of commercial and private documents by private individuals against petitioner Reyes, Ong, Briones, Lucena, Espiritu, and Tamundong.

On 21 August 2001, prior to the expiry of the period to file a motion for reconsideration, Informations for Falsification of Commercial and Private Documents under paragraphs 1 and 2, Article 172,[7] in relation to paragraph 2 of Article 171[8] of the

[7] Article 172 of the Revised Penal Code punishes any private individual who shall commit any of the acts of falsification enumerated in Article 171 in any public or official document or letter of exchange or any other kind of commercial document and any person who, to the damage of a third party, or with intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in Article 171.

[8] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall **falsify** a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. **Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;**

3. Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

Revised Penal Code, were filed against petitioner, Ong, Briones, Lucena, Espiritu, and Tamundong before Branch 2 of the Metropolitan Trial Court (MTC) of Manila apparently relying on the Rances resolution dated 18 June 2001. The cases were docketed as Criminal Cases No. 365255-88.

On 28 August 2001, petitioner filed a motion for reconsideration of the 18 June 2001 Resolution of Prosecutor Rances. He raised the issues earlier brought up by Ong, Briones, Lucena, Espiritu and Tamundong, contending there was lack of probable cause and that there existed a prejudicial question. The other respondents in the criminal complaint filed a separate joint motion for reconsideration on 4 September 2001.[9]

Meanwhile, on 13 November 2001, petitioner filed an Urgent Motion to Suspend Proceedings and to Defer Arraignment of Accused before the MTC of Manila where the criminal cases were pending, leading to the cancellation of the arraignment scheduled for 21 November 2001.

Citing no cogent reason to modify or reverse the assailed 18 June 2001 Resolution, Prosecutor Rances denied the two motions for reconsideration filed by petitioner and his co-respondents in a Resolution issued on 13 December 2001.

Ong, Briones, Lucena, Espiritu, and Tamundong appealed the 13 December 2001 Resolution[10] to the Office of the DOJ Secretary while petitioner filed a Petition for Review with the same office.[11]

On 27 June 2003, Undersecretary (Usec.) Ma. Merceditas N. Gutierrez (representing the Office of the DOJ Secretary) resolved the appeal and Petition for Review in a joint Resolution

---

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

[9] CA *rollo*, p. 555.

[10] *Rollo*, pp. 646-695.

[11] *Id.* at 699-737.

reversing the Resolutions dated 18 June 2001 and 13 December 2001 of Prosecutor Rances. In ruling that the complaint in I.S. No. 2000-1491 should be dismissed, Usec. Gutierrez took into consideration the following:

(1) That the confirmation advices were mere renewals forming part of the earlier loans of PEARLBANK under an existing credit line agreement;

(2) That [petitioner, Ong, Lucena, Briones, Tamundong, and Espiritu] are mere employees of WINCORP performing perfunctory functions in good faith;

(3) That Confirmation Advices are not commercial documents;

(4) That SEC Case No. 0400-6590, is a prejudicial question, involving issues which are intimately related to the issues in the present case.

Thus, the Office of the DOJ Secretary ordered the Office of the Chief State Prosecutor to move for the withdrawal of the Informations from the MTC.[12]

PEARLBANK filed a motion for reconsideration with the Office of the DOJ Secretary for the setting aside of its 27 June 2003 Resolution, with a motion[13] praying that DOJ Usec. Gutierrez inhibit herself from the proceedings.

On 4 December 2003, DOJ Secretary Simeon Datumanong issued a Resolution granting the motion for reconsideration of PEARLBANK.[14]

In effect, DOJ Secretary Datumanong reversed the 27 June 2003 Resolution of Usec. Gutierrez and reinstated the 18 June 2001 Resolution of Prosecutor Rances finding probable cause to charge petitioner and other respondents in I.S. No. 2000-149, except for Eric R. G. Espiritu, for the crime of falsification of commercial and private documents:

---

[12] *Id*.

[13] CA *rollo*, pp. 816-835; 17 July 2003.

[14] *Id.* at 51-57.

WHEREFORE, the resolution dated 27 June 2003 (Resolution No. 283, Series of 2003) is hereby REVERSED and SET ASIDE. The Chief State Prosecutor's Review Resolution dated 18 June 2001 is hereby REINSTATED, with the MODIFICATION that respondent ERIC R.G. ESPIRITU should be excluded. The Chief State Prosecutor is directed to cause the amendment of the informations filed against said respondent Espiritu by excluding him therefrom, and to report the action taken hereon within ten (10) days from receipt hereof.[15]

In said Resolution, DOJ Secretary Datumanong explained that while Eric R. G. Espiritu was one of the signatories of the Certifications, considering the nature of the certifications in question and his duties and functions, it would appear that he was entitled to rely on the Certifications and representations of those in the Treasury group. The DOJ Secretary ratiocinated that there was no prejudicial question involved, since the existence of an outstanding obligation on the part of PEARLBANK under its Credit Line with WINCORP was irrelevant and immaterial to the falsification cases, and shall not be determinative of the outcome of said falsification cases. Explaining further, he said that it was clear from the admissions of respondents therein that the loans reflected in the Confirmation Advices, which appeared to be new loans, were matched against the alleged outstanding loans of complainant.

On 8 January 2004, petitioner filed a motion for reconsideration of the 4 December 2003 Resolution of the DOJ Secretary.[16]

On the other hand, his co-respondents filed a separate motion for reconsideration on 16 January 2004.[17]

On 1 March 2005, DOJ Secretary Datumanong denied both motions for reconsideration.

Petitioner sought recourse with the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Court, docketed as CA-G.R. No. 90006. Petitioner sought

---

[15] *Id.* at 57.

[16] *Id.* at 881-906.

[17] *Id.* at 907-922.

the nullification of the 4 December 2003 DOJ Resolution based on the following arguments:

(a) petitioner did not make any untruthful statements in the Confirmation Advices since [PEARLBANK] allegedly has an outstanding obligation with Westmont Investment Corporation;

(b) WINCORP's Confirmation Advices subject of the falsification case were not commercial documents; and

(c) a prejudicial question exists warranting the suspension of proceedings in the falsification case.

During the pendency of the petition for *certiorari* with the Court of Appeals, petitioner filed an Urgent *Ex Parte* Motion to Suspend Further Proceedings before the same MTC Court on 11 July 2005, contending that Criminal Case Nos. 365255 to 88 should be suspended, since he had filed a pending Petition for *Certiorari* under Rule 65 of the Rules of Court with the Court of Appeals to annul the 4 December 2003 and 1 March 2005 Resolution of the DOJ.

On 26 October 2005, the Court of Appeals promulgated its Decision dismissing CA-G.R. No. 90006. The appellate court found that the DOJ Secretary did not commit grave abuse of discretion in finding that there was probable cause for holding that petitioner was guilty of the offense charged. It noted that the Informations were already filed against petitioner before Branch 2 of the MTC of the National Capital Region (NCR), and petitioner's liability for the crime of falsification of commercial and private documents could best be threshed out at the trial on the merits of the case.

On 7 February 2006, the Court of Appeals issued a Resolution denying petitioner's motion for reconsideration.

Petitioner thus filed this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, making the following assignment of errors:

I.

THE COURT OF APPEALS SANCTIONED A DEPARTURE FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT ALLOWED THE ARBITRARY AND CAPRICIOUS EXERCISE BY THE DOJ OF ITS POWER TO DETERMINE PROBABLE CAUSE. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING ITS 4 DECEMBER 2003 AND 1 MARCH 2005 RESOLUTIONS.

II.

THE CONSTITUTION EXPRESSLY PROVIDES THAT NO PERSON SHALL BE DENIED THE EQUAL PROTECTION OF THE LAWS. HOWEVER, THE COURT OF APPEALS COUNTENANCED THE DOJ'S VIOLATION OF SUCH CONSTITUTIONAL RIGHT OF PETITIONER WHEN THE DOJ DISMISSED THE CHARGES AGAINST MR. ERIC R. G. ESPIRITU AND YET FOUND PROBABLE CAUSE AGAINST HEREIN PETITIONER EVEN AS BOTH ARE SIMILARLY SITUATED.

III.

THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT UPHELD THE DOJ RESOLUTIONS WHICH DID NOT ONLY FAIL TO CONSIDER THE EVIDENCE ON RECORD. LIKEWISE, THE COURT OF APPEALS SANCTIONED THESE RESOLUTIONS WHICH WERE NOT IN ACCORD WITH EXISTING LAW AND SUPREME COURT DECISIONS ON PREJUDICIAL QUESTIONS.

IV.

THE COURT OF APPEALS COMMITTED SERIOUS LEGAL ERROR AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT UPHELD THE DOJ'S CLASSIFICATION OF THE CONFIRMATION ADVICES SUBJECT OF THE CASE *A QUO* AS COMMERCIAL DOCUMENTS, A CLASSIFICATION WHICH IS CONTRARY TO ITS OWN EARLIER DETERMINATION AND THAT OF THE DOJ.

Essentially, petitioner avers that his rights to due process and equal protection of the law were jeopardized when DOJ Secretary Datumanong issued his 4 December 2004 Resolution affirming the finding of probable cause against him and the

other respondents in I.S. No. 2000-1491, and reversing the earlier 27 June 2003 Resolution of his Office, which ordered the dismissal of the complaint of PEARLBANK, there being no new evidence presented between the two Resolutions. He further accuses the DOJ Secretary of violating his right to the equal protection of the law by dismissing the charges against Espiritu, another respondent in I.S. No. 2000-1491, but not those against him. He insists that the charges against him must be dismissed, arguing that he and Espiritu are similarly situated.

Petitioner prays that the Court nullify and set aside the Court of Appeals Decision dated 26 October 2005 and Resolution dated 7 February 2006 in CA-G.R. No. 90006, there being no probable cause to charge him with the crimes of falsification of commercial and private documents. He further alleges that the proceedings in Criminal Cases No. 365255-88 should be suspended pending resolution of the two SEC Cases which have now been transferred to the jurisdiction of, and are now pending before, the Regional Trial Courts of Makati on the ground that these cases constitute a prejudicial question.

This Court finds the present petition to be without merit and accordingly denies the same.

The issues presented by petitioner may be narrowed down to two:

(a) whether or not there is probable cause to file an information for falsification of private and commercial documents against petitioner; and

(b) whether the two cases before the SEC are prejudicial questions which have to be resolved before the criminal cases may proceed.

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[18] The term does not mean

---

[18] *Sy v. Secretary of Justice*, G.R. No. 166315, 14 December 2006, 511 SCRA 92, 96; *Metropolitan Bank and Trust Company v. Court of Appeals*, G.R. No. 154685, 27 November 2006, 508 SCRA 215, 224; *Cabrera v. Marcelo*,

"actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[19]

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[20] In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense.[21] What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power,

---

G.R. No. 157835, 27 July 2006, 496 SCRA 771, 782; *Osorio v. Desierto*, G.R. No. 156652, 13 October 2005, 472 SCRA 559, 573; *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, 16 February 2005, 451 SCRA 533, 550; *Quiambao v. Desierto*, G.R. No. 149069, 20 September 2004, 438 SCRA 495, 508; *Serapio v. Sandiganbayan*, 444 Phil. 499, 531 (2003); *Fabia v. Court of Appeals*, 437 Phil. 389, 398-399 (2002); *Domalanta v. Commission on Elections*, 390 Phil. 46, 62-63 (2000); *Webb v. Hon. De Leon*, 317 Phil. 758, 779-780 (1995); *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[19] *Quiambao v. Desierto, id.*; *Fabia v. Court of Appeals, id.*; *Osorio v. Desierto, id.*

[20] *Sarigumba v. Sandiganbayan, supra* note 18; *Serapio v. Sandiganbayan, supra* note 18, citing *Webb v. De Leon, supra* note 18; *Domalanta v. Commission on Elections, supra* note 18, citing *Pilapil v. Sandiganbayan, supra* note 18.

[21] *Sarigumba v. Sandiganbayan, id.*

which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal.[22] He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case.[23] Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice.[24] And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.[25]

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[26]

---

[22] *Public Utilities Department v. Hon. Guingona, Jr.,* 417 Phil. 798, 804 (2001); *Joaquin, Jr. v. Drilon,* 361 Phil. 900, 907 (1999).

[23] *Advincula v. Court of Appeals,* 397 Phil. 641, 650 (2000); *Punzalan v. Dela Peña,* G.R. No. 158543, 21 July 2004, 434 SCRA 601.

[24] *Public Utilities Department v. Hon. Guingona, Jr., supra* note 22.

[25] *Id.*

[26] *First Women's Credit Corporation v. Perez,* G.R. No. 169026, 15 June 2006, 490 SCRA 774, 777.

The restraint exercised by this Court in interfering with the determination of probable cause by the prosecutor, unless there is grave abuse of discretion, is only consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule,[27] none of which are obtaining in the case now before us.

In the present case, petitioner was not able to convince this Court to deviate from the general rule of non-interference. The Court of Appeals did not err in dismissing petitioner's application for a writ of *certiorari*, absent grave abuse of discretion on the part of the DOJ Secretary in finding probable cause against him for the falsification of commercial and private documents.

In *D.M. Consunji, Inc. v. Esguerra*,[28] we defined grave abuse of discretion in this wise:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Contrary to the claims of petitioner, the Court of Appeals did not perfunctorily or mechanically deny his Petition for *Certiorari* therein. A comprehensive review of the assailed Decision of the appellate court readily reveals that it considered and judiciously passed upon all the arguments presented by both parties before finally decreeing the dismissal of petitioner's Petition for *Certiorari*.

Although no new evidence was presented by the parties from the time the first Resolution was issued by DOJ Usec. Gutierrez on 7 June 2003 until the second Resolution was issued by DOJ

---

[27] *Id.* To afford adequate protection to the constitutional rights of the accused. (*Hernandez v. Albano*, 125 Phil. 513, 516-517 [1967].)

[28] 328 Phil. 1168, 1181 (1996).

Secretary Datumanong on 4 December 2004, the DOJ Secretary is not precluded from making inferences of fact and conclusions of law which may be different from, contrary to, or even entirely abandoning, the findings made by DOJ Usec. Gutierrez although they were both faced with the same evidence and arguments.

First, it must be noted that DOJ Secretary Datumanong issued his Resolution of 4 December 2004 upon the filing by PEARLBANK of a motion for reconsideration of the Resolution dated 7 June 2003 of DOJ Usec. Gutierrez entirely dismissing its complaint. The 4 December 2004 Resolution, therefore, of DOJ Secretary Datumanong was the result of his acting on, and granting of, the motion for reconsideration of PEARLBANK. The purpose of a motion for reconsideration is precisely to request the court or quasi-judicial body to take a second look at its earlier judgment and correct any errors it may have committed therein.

Second, it cannot be said that DOJ Secretary Datumanong's final ruling is entirely without basis when, in fact, Reviewing Prosecutor Rances had earlier made a similar finding on 18 June 2001 that there was probable cause to believe that petitioner and the other respondents in I.S. No. 2000-1491 were guilty of falsification of commercial and private documents, based on essentially the same evidence and arguments.

And finally, DOJ Secretary Datumanong exhaustively presented in his 4 December 2004 the legal and factual reasons for his reversal of the 27 June 2003 Resolution of DOJ Usec. Gutierrez, which negated petitioner's assertion of capriciousness, whimsicality, or arbitrariness on his part.

Equally without merit is petitioner's assertion that upon dismissal of the charges against his co-respondent Espiritu, those against him must likewise be dismissed. Petitioner insists that if the charges against an accused rest upon the same evidence used to charge a co-accused, the dismissal of the charges against the former should benefit the latter.

This is flawed reasoning, a veritable *non sequitur*.

Suffice it to say that it is indubitably within the discretion of the prosecutor to determine who must be charged with what crime or for what offense. In *Webb v. De Leon*[29] in which the petitioners questioned the non-inclusion of Alfaro in the Information for rape with homicide filed against them, despite Alfaro's alleged conspiratorial participation in the crime charged, this Court pronounced that:

> [T]he prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasboard of factors which are best appreciated by prosecutors x x x.

While the right to equal protection of the law requires that litigants are treated in an equal manner by giving them the same rights under similar circumstances,[30] it may not be perversely used to justify desistance by the authorities from prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged.

Petitioner further insists that the proceedings in SEC Cases No. 04-00-6590 and No. 04-00-6591, now pending before the RTC of Makati[31] (civil cases), warrant the suspension of Criminal Cases No. 365255-88. (criminal cases).

We disagree.

Under Rule 111 of the Revised Rules of Court, a criminal action may be suspended upon the pendency of a prejudicial question in a civil action, to wit:

> Sec. 6. *Suspension by reason of prejudicial question*. — A petition for suspension of the criminal action based upon the pendency

---

[29] *Supra* note 18 at 800.

[30] *Loong v. Commission on Elections*, 326 Phil. 790, 805 (1996).

[31] RTC of Makati; Transfer of jurisdiction was made pursuant to the Securities Regulation Code, as amended.

of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in court for trial, and shall be filed in the same criminal action at any time before the prosecution rests.

A ***prejudicial question*** is defined as one which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.[32]

The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it that it determines the guilt or innocence of the accused; and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[33]

It comes into play generally in a situation in which a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[34]

---

[32] *Tuanda v. Sandiganbayan*, G.R. No. 110544, 17 October 1995, 249 SCRA 342, 351; *Yap v. Paras*, G.R. No. 101236, 30 January 1992, 205 SCRA 625, 629; *Donato v. Luna*, G.R. No. 53642, 15 April 1988, 160 SCRA 441, 445; *Quiambao v. Osorio*, G.R. No. L-48157, 16 March 1988, 158 SCRA 674, 678; *Ras v. Rasul*, G.R. Nos. 50441-42, 18 September 1980, 100 SCRA 125, 127.

[33] *People v. Consing, Jr.*, 443 Phil. 454, 459-460 (2003).

[34] *People v. Sandiganbayan*, G.R. Nos. 162748-50, 28 March 2006, 485 SCRA 473, 492-493, citing *Tuanda v. Sandiganbayan*, *supra* note 32.

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. Based on Section 7 of the same rule, it has two essential elements:

> Sec. 7. *Elements of prejudicial question*. — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In *Sabandal v. Tongco*,[35] this Court had the opportunity to further expound on the resolution of prejudicial questions in this manner:

> If both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or there is no necessity "that the civil case be determined first before taking up the criminal case," therefore, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

There is no prejudicial question here.

We note that the Informations filed in the criminal cases charge petitioner and his other co-accused with falsification of commercial and private documents under paragraph 1 of Article 172, in relation to paragraph 2 of Article 171 of the Revised Penal Code; and paragraph 2 of Article 172, in relation to paragraph 2 of Article 171 of the Revised Penal Code, in signing and/or issuing the questioned Confirmation Advices, Special Powers of Attorney and Certifications on behalf of WINCORP, stating therein that PEARLBANK owed the third parties (lenders and

---

[35] 419 Phil. 13, 18 (2001).

investors). Each of the Informations[36] alleged that the therein named accused:

> x x x confederating and conspiring together, did then and there willfully, unlawfully and feloniously prepare, execute and sign a Confirmation Advice of WINCORP x x x to make it appear in the said commercial document that PEARLBANK SECURITIES, INC., a corporation legally established, is a borrower of WINCORP, having allegedly secured and granted a loan in the amount of x x x when in truth and in fact, the said accused well knew that PEARLBANK SECURITIES, INC. had not secured nor had been granted said loan on the date above-mentioned, and having falsified said document in the manner stated, the said accused issued a copy of the said document, which has not been notarized before a notary public or other person legally authorized to do so, the accused issued the said document to, and was received by one Tiu K. Tiac to the damage and prejudice of PEARLBANK SECURITIES, INC., represented by its Treasurer and Director Juanita U. Tan.

The principal issue to be resolved in the criminal cases is whether or not petitioner committed the acts referred to in the Informations, and whether or not these would constitute falsification of commercial and private documents under the law.

In contrast, the issues to be resolved in SEC Case No. 04-00-6591 are as follows:

(1) whether or not Tankiansee is entitled to the accounting and disclosure pursuant to Section 74, Tile VII of the Corporation Code of the Philippines;

(2) whether or not Tankiansee is entitled to be furnished copies of the records or documents demanded from WINCORP;

(3) whether or not WINCORP is liable to Tankiansee for damages.

SEC Case No. 04-00-6590 involves the following issues:

(1) whether or not PEARLBANK has loan obligations with WINCORP or its stockholders;

---

[36] CA *rollo*, pp. 654-673.

(2) whether or not the subject Confirmation Advices and other related documents should be declared to be without force and effect or if PEARLBANK is entitled to be relieved of the legal effects thereof;

(3) whether or not defendants therein are liable for damages to PEARLBANK as a consequence of this alleged fraudulent scheme.[37]

A cursory reading of the above-mentioned issues would show that, although apparently arising from the same set of facts, the issues in the criminal and civil cases are clearly different from one another. Furthermore, the issues in the civil cases are not determinative of the issues in the criminal cases.

Petitioner particularly calls attention to the purported prejudicial issue in the civil cases: whether PEARLBANK has outstanding loan obligations to WINCORP or its stockholders/investors. Although said issue may be related to those in the criminal cases instituted against petitioner, we actually find it immaterial to the resolution of the latter.

That PEARLBANK does have outstanding loans with WINCORP or its stockholders/investors is not an absolute defense in, and would not be determinative of the outcome of, the criminal cases. Even if the RTC so rules in the civil cases, it would not necessarily mean that these were the very same loan transactions reflected in the Confirmation Advices, Special Powers of Attorney and Certifications issued by WINCORP to its stockholders/investors, totally relieving petitioner and his other co-accused from any criminal liability for falsification. The questioned documents specifically made it appear that PEARLBANK obtained the loans during the first four months of the year 2000. Hence, in the criminal cases, it is not enough that it be established that PEARLBANK has outstanding loans with WINCORP or its stockholders/investors, but also that these loans were acquired by PEARLBANK as WINCORP made it to appear in the questioned documents it issued to its stockholders/investors. This only demonstrates that the resolution of the two civil cases

[37] *Rollo*, p. 189.

is not *juris et de jure* determinative of the innocence or guilt of the petitioner in the criminal cases.

Finally, we note that the criminal cases were already instituted and pending before the MTC. Petitioner would have the opportunity to present the arguments and evidence in his defense in the course of the trial of said cases which will now proceed by virtue of this Decision.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision dated 26 October 2005 and Resolution dated 7 February 2006 of the Court of Appeals in CA-G.R. No. 90006 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172146. July 30, 2008]

RODOLFO CORNES, VIRGILIO CORNES, ENRIQUITO CORNES, ALFREDO CORNES, ELESEO CORNES, BENITO CORNES, CONSUELO "NITA" CORNES-VALENZUELA, MA. ALBERTA CORNES and her children CHERILYN, JONALYN, DIANALYN, MARIE-JOY, ERNESTO, JR., JERSON and ERIKA, all surnamed CORNES, (Ernesto, Jr., Jerson and Erika, being minors, are represented herein by their mother and guardian *ad litem,* Ma. Alberta Cornes), DONATO ROBLES, EDUARDO ROBLES, MARIA ROBLES and her children DONATO, EDUARDO, RIZALINO, EDWIN, VICENTE, JESSIE, ANICETO, JERRY, all

surnamed ROBLES, and MARITES ROBLES-FABIAN, CRISANTO, RANDY, MAUREEN, DINIA, JOANA, NOVA, FRANCISCO, JR., and BEATRIZ, all surnamed GADIANO, (Beatriz, being a minor is represented herein by her said siblings and guardians *ad litem*), *petitioners, vs.* **LEAL REALTY CENTRUM CO., INC., LEAL HAVEN, INC., ERNESTO M. LEGASPI, and All Persons Claiming Rights Under Them,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; DARAB; JURISDICTION; TENANCY RELATIONSHIP BETWEEN PARTIES; SIX INDISPENSABLE ELEMENTS. — It must be initially emphasized that for the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties. We stress that a tenancy relationship cannot be presumed. In order for a tenancy agreement to arise, it is essential to establish all its indispensable elements, *viz*: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee.

2. ID.; ID.; ID.; ID.; ID.; ID.; TENANTS; DEFINITION. — Tenants are defined as persons who — in themselves and with the aid available from within their immediate farm households — cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF COURT OF APPEALS BINDING ON THE COURT; EXCEPTIONS. — In resolving the question of tenancy, it must be borne in mind that whether a person is an agricultural tenant or not is basically a question of fact. The general rule is, a question of fact is beyond the office of this Court in a petition

for review under Rule 45 of the Rules of Court in which only questions of law may be raised. It is settled doctrine that findings of fact of the Court of Appeals are binding and conclusive upon this Court. Such factual findings shall not be disturbed, unless: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

4. ID.; EVIDENCE; BURDEN OF PROOF; RULE APPLICABLE IN ADMINISTRATIVE CASES. — Self-serving statements in pleadings are inadequate; proof must be adduced. Such claims do not suffice absent concrete evidence to support them. The burden rests on the shoulders of petitioners to prove their affirmative allegation of tenancy, which burden they failed to discharge with substantial evidence. Such a juridical tie must be aptly shown. Simply put, he who alleges the affirmative of the issue has the burden of proof, and from the plaintiff in a civil case, the burden of proof never parts. The same rule applies to administrative cases. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.

5. ID.; ID.; ID.; ID.; CASE AT BAR. — These facts taken together were deemed by both the Provincial Adjudicator and the Court of Appeals to be corroborative of the entries annotated on TCT No. 103275 that the subject landholding was indeed not tenanted, and that petitioners' predecessors-in-interest were hired laborers of JOSEFINA. Such type of occupation on the subject landholding does not create a presumption of tenancy in

petitioners' favor. Clearly, the fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. No receipts were presented as testaments to the claimed sharing of harvests. The only evidence submitted to establish the purported sharing of harvests was the testimony of petitioner Rodolfo Cornes. The sharing arrangement cannot be deemed to have existed on the basis alone of petitioner Rodolfo Cornes's claim. It is self-serving and is without evidentiary value. Self-serving statements are deemed inadequate; competent proof must be adduced. If at all, the fact alone of sharing is not sufficient to establish a tenancy relationship. The element of consent in the creation of the tenancy relationship was sorely missing. As was seen earlier, even petitioners' predecessors-in-interest were unequivocal in their admission that they worked as hired laborers on the subject landholding. The intent, if any, to institute them as tenants of the landholdings was debunked by their very admission.

6. ID.; ID.; ID.; ID.; PRECEDENT RULING OF THE COURT THAT CERTIFICATIONS OF SECRETARY OF AGRARIAN REFORM IN A GIVEN LOCALITY CONCERNING EXISTENCE OF A TENANCY RELATIONSHIP ARE NOT BINDING UPON THE COURTS. — To prove the alleged tenancy no reliance may be made upon the said public officer's testimony. What cannot be ignored is the precedent ruling of this Court that the findings of or certifications issued by the Secretary of Agrarian Reform, or his authorized representative, in a given locality concerning the presence or absence of a tenancy relationship between the contending parties, are merely preliminary or provisional and are not binding upon the courts. This ruling holds with greater effect in the instant case in light of the fact that petitioners, as herein shown, were not able to prove the presence of all the indispensable elements of tenancy.

7. ID.; CIVIL PROCEDURE; INDISPENSABLE PARTY; CASE AT BAR. — One glaring factor that strikes the mind of this Court is the fact that petitioners did not implead JOSEFINA, the seller of the subject landholding, in any of their Complaints filed below. JOSEFINA, who is a party to the said contract of sale, is an indispensable party. An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. As a party to the contract of

sale, which petitioners seek to declare voided and annulled, there cannot be a determination between the parties already before the court, a determination that is effective, complete, or equitable without impleading JOSEFINA; hence, rendering their action dismissible.

8. ID.; ID.; ID.; WHEN AN INDISPENSABLE PARTY IS NOT BEFORE THE COURT, THE ACTION SHOULD BE DISMISSED. — From the beginning, this was a legal hindrance which petitioners were not able to successfully overcome. It is hornbook doctrine that the joinder of all indispensable parties must be made under *any and all conditions*, their presence being a *sine qua non* for the exercise of the judicial power. When an indispensable party is not before the court, the action should be dismissed.

9. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; POTENTIAL FARMER-BENEFICIARIES; THEIR IDENTIFICATION AND QUALIFICATION OR DISQUALIFICATION ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE DAR SECRETARY. — Finally, anent the question on the coverage of the subject landholding under the CARP, it pays well to heed that the jurisdiction over the aforesaid issue is within the proper confines of the DAR Secretary, pursuant to DARAB Revised Rules, Rule II, Section 1(g), as well as Section 2 of Administrative Order No. 06-00, providing for the Rules of Procedure for Agrarian Law Implementation Cases, granting exclusive jurisdiction to the DAR Secretary in matters involving the classification and identification of landholdings for coverage under the CARP, including the identification, qualification or disqualification of potential farmer-beneficiaries.

APPEARANCES OF COUNSEL

Arquillo Dela Cruz & Albao Law Offices for petitioners.
Dominica Llera-Agno for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals, dated 31 March 2005 and 5 April 2005, respectively, which reversed the Decision[3] dated 1 February 2000 of the Department of Agrarian Reform Adjudication Board (DARAB), and reinstated the Decision[4] dated 31 July 1997 of the Provincial Adjudicator in DARAB Cases No. 6489-6492 (Reg. Case Nos. 234-T'91, 396-T'93, 397-T'93 and 827-T'95).

The instant Petition traces its origins from four separate Complaints filed with the Provincial Adjudication Board, Region III in Tarlac, Tarlac.

DARAB Case No. 234-T'91

The first Complaint[5] dated 19 August 1991, and docketed as **DARAB Case No. 234-T'91** was filed by petitioners and their predecessors-in interest Rodolfo Cornes, Pablo Cornes, Sr., Renato T. Cornes, Virgilio T. Cornes, Enriquito T. Cornes,

---

[1] Penned by Associate Justice Edgardo P. Cruz with Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza, concurring; *rollo*, pp. 84-96.

[2] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; *id.* at 97-98.

[3] Penned by Assistant Secretary Lorenzo R. Reyes with Secretary Horacio R. Morales, Jr., Undersecretary Federico A. Poblete, Assistant Secretary Augusto P. Quijano, Assistant Secretary Edwin C. Sales and Assistant Secretary Wilfredo M. Peñaflor, concurring; CA *rollo*, pp. 87-103.

[4] Penned by Provincial Adjudicator Benjamin M. Yambao; *id.* at 11-24.

[5] The original plaintiffs therein are Rodolfo Cornes, Pablo Cornes, Sr., Renato T. Cornes, Virgilio T. Cornes, Enriquito T. Cornes, Ernesto T. Cornes, Juanito Robles, Donato Robles, Francisco Gadiano and Eduardo Robles. It named respondents Leal Realty Centrum Co., Inc., Leal Haven, Inc., Ernesto M. Legaspi, and all Persons Claiming Rights Under Them as defendants. (*Rollo*, pp. 143-150.)

Ernesto T. Cornes, Juanito Robles, Donato Robles, Francisco Gadiano and Eduardo Robles against respondents Leal Realty Centrum Co., Inc. (LEAL REALTY), Leal Haven, Inc. (LEAL HAVEN), their Managing Director Ernesto M. Legaspi, and all persons claiming rights under them for maintenance of peaceful possession and for issuance of a writ of preliminary injunction. Petitioners contended that they had been farmers and full-fledged tenants for more than 30 years of an agricultural landholding which was previously owned and registered in the name of Josefina Roxas Omaña (JOSEFINA) under TCT No. 103275 of the Registry of Deeds of Tarlac. The subject landholding consists of at least 21 hectares and is principally devoted to rice and sugar. According to petitioners, the subject landholding is covered by Republic Act No. 6657,[6] but was sold by JOSEFINA to respondents in contravention of the law. Meanwhile, LEAL HAVEN converted a portion of the subject landholding into a memorial park.

It is petitioners' stance that when respondents entered into a contract of sale with JOSEFINA, they were aware of the tenancy relationship which existed between petitioners and JOSEFINA. Respondents purportedly negotiated with petitioners to renounce their tenancy rights under the Comprehensive Agrarian Reform Law (CARL) in exchange for a compensation package as a form of disturbance compensation. However, respondents failed to comply with the terms and conditions thereof. For this reason, petitioners filed a complaint with the Municipal Agrarian Reform Officer (MARO) in Victoria, Tarlac; but the conciliation efforts of the latter proved to be futile, prompting petitioners to move for their termination. Petitioners further claim that in a letter[7] dated 16 February 1991, respondents admitted their inability to pay the balance in the compensation package drawn between them and advised petitioners to continue working on the subject landholding, and to continue to appropriate for themselves the fruits thereof until complete payment shall have been made.

---

[6] Comprehensive Agrarian Reform Law of 1988.

[7] *Rollo,* p. 145.

Finally, petitioners allege that they were residing in their respective homes made of strong materials built within the premises of the subject landholding. However, they were threatened to be ousted and evicted by respondents who had solicited the assistance of saboteurs and military officers to disturb their peaceful possession without any lawful order from the courts. Petitioners sought an injunction against respondents, and prayed for the declaration of the landholding as subject to the compulsory coverage of the CARL and their entitlement to the rights and privileges accorded thereby, as well as for the payment of damages.

DARAB Case No. 396-T'93

The second Complaint,[8] dated 2 March 1993, docketed as **DARAB Case No. 396-T'93** was filed by petitioners against respondent LEAL REALTY and Spouses William Tugadi and Remedios Tugadi (SPS. TUGADI) for violation of Republic Act No. 6657, annulment of documents, title and damages, reiterating their averments in DARAB Case No. 396-T'93. In addition, petitioners posited that LEAL REALTY executed a Deed of Absolute Sale in favor of the SPS. TUGADI without proper conversion of the lot from agricultural to non-agricultural in breach of the CARL. Petitioners contended that LEAL REALTY, without proper authority, caused the subdivision of the subject landholding into smaller lots. One of such lots is Lot No. 1961-B-3-B which was transferred by LEAL REALTY in favor of the SPS. TUGADI. Petitioners impugned the subdivision as having been done without the approval of the Housing and Land Use Regulatory Board (HLURB). Fearing that they may be ejected from their dwellings, petitioners prayed that respondents be declared to have violated Republic Act No. 6657; and that the transfer from JOSEFINA to LEAL REALTY, the subdivision of the subject landholding into smaller

---

[8] The plaintiffs therein are Rodolfo Cornes, Pablo Cornes, Sr., Renato T. Cornes, Virgilio T. Cornes, Enriquito T. Cornes, Ernesto T. Cornes, Juanito Robles, Donato Robles, Francisco Gadiano and Eduardo Robles. It named Leal Realty Centrum Co., Inc., and Spouses William Tugadi and Remedios Tugadi as defendants. (*Id.* at 165-171.)

lots, and the transfer of Lot No. 1961-B-3-B to SPS. TUGADI be declared null and void.

DARAB Case No. 397-T'93

The third Complaint,[9] also dated 2 March 1993, and docketed as **DARAB Case No. 397-T'93** was filed by petitioners against respondent LEAL REALTY and Spouses Romeo Alcazaren and Juliet Astrero-Alcazaren (SPS. ALCAZAREN) for violation of Republic Act No. 6657, annulment of documents, title and damages. In like manner, as with their prior Complaints, petitioners questioned the subdivision of the subject landholding into smaller lots as contrary to law. In particular, petitioners contested the issuance of TCT No. T-237899 of the Register of Deeds of Tarlac over Lot No. 1961-B-1-A in favor of the SPS. ALCAZAREN. As with their prior two Complaints, petitioners prayed for the declaration of nullity of the transfer of the subject landholding from JOSEFINA to LEAL REALTY, including the nullity of TCT No. T-237899 in the name of the SPS. ALCAZAREN.

DARAB Case No. 329-T'95

On 17 March 1995, respondent LEAL REALTY, represented by its Manager, Ernesto Legaspi, filed a Complaint[10] with the Provincial Adjudication Board, Region III in Tarlac against petitioner Nita Cornes-Valenzuela (VALENZUELA), docketed as **DARAB Case No. 827-T'95** for injunction with prayer for temporary restraining order and preliminary injunction. LEAL REALTY alleged that sometime in February 1995, despite its objection, VALENZUELA constructed a residential house within the premises of the subject landholding; hence, it prayed for the removal of the construction at VALENZUELA's expense.

Later, all four Complaints were consolidated.

---

[9] The plaintiffs therein are Rodolfo Cornes, Pablo Cornes, Sr., Renato T. Cornes, Virgilio T. Cornes, Enriquito T. Cornes, Ernesto T. Cornes, Juanito Robles, Donato Robles, Francisco Gadiano and Eduardo Robles. It named Leal Realty Centrum Co., Inc. and Spouses Romeo Alcazaren and Juliet Astrero-Alcazaren as defendants. (*Id.* at 187-193.)

[10] *Id.* at 285-287.

The Ruling of the Provincial Adjudicator

On 31 July 1997, Provincial Adjudicator Benjamin M. Yambao rendered a Decision in favor of respondents and against petitioners. The Complaints filed by petitioners, *i.e.,* DARAB Cases No. 234-T'91, No. 396-T'93, and No. 397-T'93 were ordered dismissed. On the other hand, the prayer of respondent LEAL REALTY in the fourth Complaint, DARAB Case No. 329-T'95 was granted.

The Provincial Adjudicator found that there was no tenancy relationship which existed between the parties. He maintained that no convincing evidence was established to prove the tenancy arrangement other than petitioners' self-serving declaration. The Provincial Adjudicator ruled that Jacinto Cornes (JACINTO), the father and predecessor-in-interest of the petitioners Cornes, declared that he was a hired laborer in the subject landholding.[11] Petitioners' other predecessors-in-interest,[12] namely, Pablo Cornes (PABLO), Francisco Gadiano (FRANCISCO), Domingo Pagarigan (DOMINGO), and Juanito Robles (JUANITO), were also found to have worked as hired hands. As petitioners merely derived the relationship from their predecessors-in-interest who were hired workers, they cannot be expected to rise above their source. According to the Provincial Adjudicator, the fact that petitioners were seen working on the subject landholding did not raise a presumption of the existence of a tenancy relationship.

Further, the Provincial Adjudicator declared that a tenancy relationship cannot be inferred from the alleged compensation package entered into by petitioners and their predecessors-in-interest with respondent LEAL REALTY in the amount of ₱114,000.00, leaving an unpaid balance of ₱46,000.00. At best, it was deemed as a gesture of compassion akin to a *pabuya* upon the instruction of JOSEFINA, the former landowner, to respondent LEAL REALTY.

---

[11] CA *rollo*, p. 19.

[12] Pablo Cornes, Francisco Gadiano, and Eduardo Robles were among the original plaintiffs in DARAB Cases No. 234-T'91, No. 396-T'93, and No. 397-T'93.

The Provincial Adjudicator also declared the sale between JOSEFINA and LEAL REALTY as valid on the following rationalization:

On the issue of coverage or non-coverage. The landholding in question consists of 201,051 square meters, more or less, located at Brgy. Bulo, Victoria, Tarlac. The property was formerly owned by Josefina Roxas Omana then covered by TCT No. 103275. On June 6, 1988 or nine (9) days before Republic Act No. 6657 took effect, Josefina Roxas Omana sold the land by virtue of a Deed of Absolute Sale in favor of defendant corporation. A title was subsequently issued in favor of the latter under TCT No. 215216 of the Register of Deeds of Tarlac, Tarlac and registered on September 12, 1988.

Given this situation, there is no question that the sale between the previous owner, Josefina Roxas Omana, and defendant corporation is valid. [The] [p]rovision of Section 6, paragraph 4 of Republic Act No. 6657 states that:

"x x x Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void; Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares."

What is being prohibited by law is the disposition of the property after the effectivity of RA 6657 in order to circumvent the provision of the said law.[13]

The Provincial Adjudicator also declared that a portion of the subject landholding was within the coverage of the CARL. He reached the foregoing conclusion in this wise:

Likewise, the remaining portion which is 17 hectares, more or less, which is agricultural in nature, excluding the memorial park duly approved for conversion appears to be within the coverage of

---

[13] CA *rollo,* pp. 20-21.

the Comprehensive Agrarian Reform Program. It should be noted that on July 22, 1988, former President Corazon C. Aquino approved and signed Proclamation No. 131 instituting a Comprehensive Agrarian Reform Program which shall cover, regardless of tenurial arrangements and commodity produce, all public and private agricultural lands as provided in the Constitution, including whenever applicable in accordance with law, other land if the public domain is suitable for agriculture. On the same date, Executive Order No. 229 was promulgated providing for the mechanism for the implementation of the Comprehensive Agrarian Reform Program. On June 15, 1988, or nine (9) days after the sale of the land in issue, RA 6657 took effect. Said law covers, regardless of tenurial arrangements and commodity produced, all public and private agricultural land as provided in Proclamation No. 131 and Executive Order No. 229, including lands of public domain suitable for agriculture.

The fact that the landholding in question was not covered by Operation Land Transfer pursuant to PD 27 is well[-]taken considering that the land in issue is predominantly sugar land[,] whereas PD No. 27 covers only rice and corn lands. In its schedule of implementation provided in Section 7 thereof, the land in question clearly, squarely and timely falls within its last phase of implementation. Under Phase III (b) of the said section, "Landholdings from the retention limit up to twenty-four (24) hectares, to be covered on the sixth (6^{th}) year from the effectivity of this Act and to be completed within four (4) years, to implement principally the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till.[14]

The Provincial Adjudicator held that the Department of Agrarian Reform (DAR) was, thus, duty-bound to look into the petitioners' qualification as prospective farmer-beneficiaries, notwithstanding the fact that they were found to be hired laborers.

Finally, the Provincial Adjudicator held that LEAL REALTY violated Republic Act No. 6657 when it subdivided and inter-subdivided the subject landholding and sold portions thereof to the SPS. TUGADI and SPS. ALCAZAREN. Both sales were found to have been made after the effectivity of the said Act.

---

[14] *Id.* at 21.

However, it denied jurisdiction thereon on the ground that the matter was within the cognizance of the Regional Trial Court. Also, anent the fourth Complaint which was filed by LEAL REALTY against petitioner VALENZUELA, the Provincial Adjudicator found that VALENZUELA constructed the improvements on the portion of the landholding in question as an extension of the house of her father and predecessor-in-interest Pablo Cornes. As the latter cannot be said to be a *bona fide* tenant, VALENZUELA was ordered to have the said improvements removed.

The decretal portion of the Provincial Adjudicator's Decision of 31 July 1997 reads:

> WHEREFORE, premises considered, judgment is hereby rendered in the following cases, to wit:
>
> 1. Dismissing DARAB CASE NO. 234-T'91 for lack of merit;
>
> 2. Dismissing DARAB CASE NO. 396-T'93 and 397-T'93 for lack of jurisdiction;
>
> 3. Ordering the removal of any improvements made by the defendant in DARAB CASE NO. 827-T'95; and
>
> 4. No cost.[15]

Petitioners brought forth an appeal of the 31 July 1997 Decision of the Provincial Adjudicator of Tarlac before the DARAB Central Office in Diliman, Quezon City.

The Ruling of the DARAB

On 1 February 2000, the DARAB vacated the appealed Decision. It reversed the 31 July 1997 Decision of the Provincial Adjudicator, and disposed, thus:

> WHEREFORE, premises considered, judgment is hereby rendered SETTING ASIDE the decision of the Honorable Adjudicator and ENTERING A NEW ONE as follows:
>
> 1. Declaring [herein petitioners] as bona fide tenants of the subject landholding;

[15] Records, Volume IV, p. 1525.

2. If reinstatement is no longer possible due to the effective change of the subject landholding unto other purposes other than agricultural, then [herein respondents] are ordered to pay [herein petitioners] disturbance compensation and other benefits provided for in par. VI-B (6), DAR Administrative Order No. 7, Series of 1997 without prejudice to the prosecution of the former for illegal conversion.[16]

The DARAB held that the right to security of tenure does not only apply to *bona fide* tenants; but also to actual tillers of the land. It also declared that there was an implied tenancy between the parties. The DARAB ruled that for more than 30 years, the petitioners were deemed tenants of the subject landholding.

The DARAB pronounced:

Pursuant to Department Memorandum Circular No. 2, Series of 1973 issued by the DAR for the implementation of P.D. No. 27, security of tenure is likewise available to actual tillers of the land and actual tillers has been defined "to be the tenant-farmer, sublessee and purchaser or mortgagee of possession who at the time the decree was promulgated has been in actual possession and cultivation of his farmholding and who has shared the products thereof for at [l]east one (1) agricultural year preceding the Decree." x x x.

x x x x x x x x x

For tenancy to exist, there must have been an agreement between the tenant and the landowner, x x x this means that without such agreement, express or implied there can be no tenancy. [Herein respondents] claimed that [herein petitioners] had not been instituted as tenants on the land in suit. However, the fact that they did not at all question his tenancy over the land in question for quite several years, is an implied admission or consent to the establishment of a tenancy relationship between the parties.

Thus, Sec. 5 [of] Republic Act No. 3844 provides:

> "Sec. 5. Establishment of Agricultural Leasehold Relation — The agricultural leasehold relation shall be established by operation of law in accordance with Sec. 4 of this Code and, in other cases, either orally or in writing express or implied."

---

[16] CA *rollo,* p. 39.

Consequently, the tenant herein is entitled to security of tenure on this landholding and can not be ejected therefrom unless authorized by the Court (Sec. 7 of the Code of Agrarian Reforms (sic), R.A. No. 3844, *Baoanan vs. Reyes*, CA-G.R. No. SP-04210, July 15, 1976). Security of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their landholdings is tantamount to deprivation of their and their families[']s only means of livelihood. Such dispossession, therefor, is indeed a grave injury which social justice seeks to vindicate (*Bernardo vs. Court of Appeals*, 168 SCRA 440, December 14, 1988).

Likewise in Sec. 56, Republic Act No. 1199, it provides that in case there is doubt in the interpretation and enforcement of laws or acts relative to tenancy, including agreements between the landowner and the tenant, it should be resolved in favor of the latter to protect him from unjust exploitation and arbitrary ejectment by unscrupulous landowners.

Sect[ion] 7 of Republic Act No. 38844 (sic) provides:

> *"Sec. 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided."*

The Supreme Court in the case of *Bernardo vs. Court of Appeals*, 168 SCRA 440-441, December 14, 1988, held that "the purchaser of the landholding is subrogated to the rights and substituted to the obligations of the agricultural lessor (Sec. 10, Rep. Act No. 3844), the agricultural leasehold relationship continues between the agricultural lessee and the purchaser automatically by operation of law and the latter, an agricultural lessor, is bound to respect the agricultural lessee[']s possession and cultivation of the land."

[Petitioners] have been in possession and cultivation of the subject landholding for more than thirty (30) years and have been identified as tenants therein by Araceli Pascua, an employee of DAR, Victoria, Tarlac in an ocular inspection conducted by the latter on the subject landholding.[17] (Underscoring supplied.)

[17] *Id.* at 34-39.

Respondents moved for reconsideration of the foregoing DARAB Decision. On 20 February 2002, the DARAB issued a Resolution[18] denying the Motion for lack of merit.

Respondents went to the Court of Appeals on a Petition for Review. On 24 April 2002, the Court of Appeals issued a Resolution[19] dismissing the same. It found that the certification of non-forum shopping attached to the Petition was signed by Ernesto M. Legaspi *sans* a board resolution and a special power of attorney giving him authority to file the action in behalf of LEAL REALTY and LEAL HAVEN, and the individual respondents. Also, certified copies of pertinent pleadings were not shown to have been attached to the Petition.

On reconsideration, the Court of Appeals issued a Resolution,[20] dated 7 August 2002, reinstating the Petition.

The Ruling of the Court of Appeals

On 31 March 2005, the Court of Appeals rendered the herein assailed Decision which granted respondents' Petition for Review. The dispositive portion of the judgment states:

> WHEREFORE, the decision dated February 1, 2000 of the Department of Agrarian Reform Adjudication Board is VACATED and SET ASIDE, while the decision dated July 31, 1997 of the Provincial Adjudicator is REINSTATED.[21]

Essentially, the Court of Appeals sided with the findings of the Provincial Adjudicator. It was adamant in ruling that for a tenancy relationship to exist, there must be a concurrence of the six requisites, *i.e.*, (i) the parties are the landowner and the tenant; (ii) the subject is agricultural land; (iii) there is consent by the landowner; (iv) the purpose is agricultural production;

---

[18] *Id.* at 57.

[19] The Resolution dated 24 April 2002 was penned by Associate Justice Edgardo P. Cruz with the concurrence of Associate Justice Rebecca de Guia-Salvador and Associate Justice Regalado E. Maambong. (*Id.* at 125.)

[20] *Id.* at 313.

[21] *Id.* at 403.

(v) there is personal cultivation; and (vi) there is sharing of the harvest. The Court of Appeals ruled that substantial evidence was wanting to support a conclusion that a tenancy relationship existed between the parties. It held that the fact that petitioners had worked on the subject landholding did not give rise to the existence of a tenancy relationship. However, it opined that notwithstanding the lack of tenancy relationship between the parties, the compensation agreement package entered into between LEAL REALTY and petitioners must be respected. Hence:

> Rodolfo, *et al[.]* failed to prove that Josefina agreed to constitute them as tenants of the landholding and that there was sharing of the produce thereof between them. On the contrary, Josefina executed an affidavit of non-tenancy in respect to the landholding which was annotated on the back of TCT No. 103275 as Entry Nos. E-17-7182, E-22-4361 and E-28-16373. Such non-tenancy was confirmed by Jacinto, Pablo, Juanito and Francisco in their affidavit admitting that they were merely hired laborers. Although the aforesaid annotations are not conclusive upon courts as to the legal nature and incidents of the relationship between Josefina and said hired laborers (*Cuaño vs. Court of Appeals,* 237 SCRA 122), the same corroborate the sworn declaration of Jacinto, Pablo, Juanito and Francisco that they were mere hired laborers, thereby precluding the existence of tenancy relationship.
>
> Respondents contend that the status of Rodolfo, *et al[.]* as tenants was substantially supported by (i) the unrebutted testimony of Rodolfo, (ii) the testimony of [Senior Agrarian Reform Technologist] Araceli, (iii) their compensation package agreement with Leal Realty which partakes of the nature of tenants' disturbance compensation, (iv) the affidavits executed by the chairman of the *Barangay* Agrarian Reform Council and the *barangay* chairman of Bulo, Victoria, Tarlac recognizing them as tenants and (v) Leal Realty's letter admitting its inability to comply with the financial package and allowing them to continue working on the landholding.
>
> Nevertheless, Rodolfo *et al[.]* failed to establish the concurrence of all the requisites of tenancy relationship; the absence of one does not make an occupant or a cultivator of a land or a planter thereon a *de jure* tenant (*Heirs of Jose Juanite vs. Court of Appeals*, 375 SCRA 273).

It is noteworthy that [Senior Agrarian Reform Technologist] Araceli's testimony indicates that in 1989, she conducted an ocular inspection of the landholding and found five tenants working thereon, including Jacinto, Pablo, Juanito and Francisco. However, the former hired laborers' occupation of their respective portions of the landholding was part of their compensation package agreement with Leal Realty which was found by the Provincial Adjudicator to be a gesture of compassion ("*pabuya*") extended by the latter, upon the instruction of Josefina, that Rodolfo, *et al[.]*, being her laborers, be given some consideration.

It is settled that certifications issued by administrative agencies or officers that a certain person is a tenant are merely provisional and not conclusive on courts (*Bautista vs. Araneta*, *supra*, citing *Oarde vs. Court of Appeals*, 280 SCRA 235). Thus, affidavits of administrative officials recognizing Rodolfo, *et al*[.] as tenants cannot be given weight in the absence of substantial evidence supporting such fact.[22]

The Court of Appeals also pronounced the sale of the subject landholding to LEAL REALTY as valid for the reason that it was entered into before the effectivity of Republic Act No. 6657.

Petitioners' Motion for Reconsideration of the 31 March 2005 Decision was denied by the Court of Appeals in a Resolution dated 5 April 2005. Moreover, in the same Resolution, the Court of Appeals granted petitioners' Motion for Substitution of Parties, to wit:

It appears from respondents' Motion for Substitution of Parties dated July 18, 2005, that respondents Pablo Cornes, Sr., Ernesto T. Cornes, Juanito C. Robles and Francisco M. Gadiano died on September 23, 2001, April 2, 1997, May 9, 2005 and October 5, 2005, respectively. Consequently, Pablo Cornes, Sr. is substituted by his children Alfredo Cornes, Eleseo Cornes, Benito Cornes and Consuelo "Nita" Cornes-Valenzuela; Ernesto T. Cornes is substituted by his widow Ma. Alberta Cornes and their children Cherilyn, Jonalyn, Dianalyn, Marie Joy, Ernesto Jr., Jerson and Erika, all surnamed Cornes, the last three, being minors, represented by their guardian *ad litem* Ma. Alberta Cornes; Juanito Robles is substituted by his widow Maria Robles and their children Donato Robles, Eduardo

[22] *Id.* at 402-403.

Robles, Rizalino Robles, Edwin Robles, Vicente Robles, Jessie Robles, Aniceto Robles, Jerry Robles and Marites Robles-Fabian; and Francisco Gadiano is substituted by his children Crisanto, Randy, Dinia, Maureen, Joana, Nova, Francisco, Jr. and Beatriz, all surnamed Gadiano, the last four represented by their siblings and guardians *ad litem*.[23]

Hence, the instant Petition.

The Issue

Petitioners assign several errors[24] which revolve on the jugular issue of whether petitioners and their predecessors-in-interest are tenants *de jure* of the subject landholding.

---

[23] *Rollo,* pp. 97-98.

[24] Petitioners made the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT VACATED THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD AND REINSTATED THE DECISION OF THE PROVINCIAL ADJUDICATOR.
2. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN DISREGARDING THE SUBSTANTIAL EVIDENCE RULE BY OVERTURNING THE FINDING OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) THAT THE PETITIONERS ARE BONA FIDE TENANTS OF THE SUBJECT LANDHOLDING.
3. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE PETITIONERS ARE MERE HIRED LABORERS INSTEAD OF BONA FIDE TENANTS/FARMERS BENEFICIARIES OF THE SUBJECT LANDHOLDING.
4. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE PETITIONERS FAILED TO ESTABLISH THE CONCURRENCE OF ALL THE REQUISITES OF TENANCY RELATIONSHIP.
5. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THERE WAS NO TENANCY RELATIONSHIP THAT EXISTED BETWEEN THE PETITIONERS (sic) AND MRS. OMAÑA, THE FORMER OWNER OF THE SUBJECT LANDHOLDING, AND/OR THE RESPONDENTS.

The Ruling of the Court

A. Tenancy Relationship

It must be initially emphasized that for the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties.[25] We stress that a tenancy relationship

6. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE PETITIONERS FAILED TO PROVE THAT MRS. OMAÑA AGREED TO CONSTITUTE THE PETITIONERS AS TENANTS OF THE SUBJECT LANDHOLDING AND THAT THERE WAS NO SHARING OF HARVEST BETWEEN THEM.
7. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT THE SALE OF THE LANDHOLDING TO LRCCI BY MRS. OMAÑA WAS VALID.
8. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN OVERTURNING THE FINDING OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD THAT THE RESPONDENTS CAN BE PROSECUTED FOR ILLEGAL CONVERSION.
9. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT THERE WAS NO REASON TO AWARD THE DISTURBANCE COMPENSATION TO THE PETITIONERS.
10. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE COMPENSATION PACKAGE THAT IS SUPPOSED TO BE GIVEN BY THE RESPONDENTS TO THE PETITIONERS WAS ONLY A GESTURE OF COMPASSION EXTENDED BY THE LATTER TO THE FORMER.
11. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE PETITIONERS' OCCUPATION OF THE LANHOLDING (sic) WAS PART OF THEIR COMPENSATION PACKAGE AGREEMENT WITH LRCCI.
12. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FINDING THAT THE LRCCI'S NON-FULFILLMENT OF THE COMPENSATION PACKAGE AGREEMENT WAS DUE TO THE VIOLATION OF THE PETITIONERS OF THE SAME. (*Rollo,* pp. 23-25.)

[25] *Philippine Overseas Telecommunications Corporation v. Gutierrez,* G.R. No. 149764, 22 November 2006, 507 SCRA 526, 534.

cannot be presumed.[26] In order for a tenancy agreement to arise, it is essential to establish all its indispensable elements, *viz:* 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee.[27]

Tenants are defined as persons who — in themselves and with the aid available from within their immediate farm households — cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.[28]

In resolving the question of tenancy, it must be borne in mind that whether a person is an agricultural tenant or not is bas*ic*ally a question of fact.[29] The general rule is, a question of fact is beyond the office of this Court in a petition for review under Rule 45 of the Rules of Court in which only questions of law may be raised.[30] It is settled doctrine that findings of fact of the Court of Appeals are binding and conclusive upon this

---

[26] *Heirs of Rafael Magpily v. de Jesus*, G.R. No. 167748, 8 November 2005, 474 SCRA 366, 372; *Suarez v. Saul,* G.R. No. 166664, 20 October 2005, 473 SCRA 628, 634, citing *VHJ Construction and Development Corporation v. Court of Appeals*, G.R. No. 128534, August 13, 2004, 436 SCRA 392, 398-399.

[27] *Philippine Overseas Telecommunications Corporation v. Gutierrez, supra* note 25.

[28] *Suarez v. Saul, supra* note 26, citing *Bautista v. Mag-isa Vda. de Villena,* G.R. No. 152564, 13 September 2004, 438 SCRA 259, 265-266.

[29] *Mon v. Court of Appeals,* G.R. No. 118292, 14 April 2004, 427 SCRA 165, 178.

[30] *Spouses Calvo v. Spouses Vergara,* 423 Phil. 939, 947 (2001), citing *Salcedo v. People,* 400 Phil. 1302, 1308 (2000).

Court.[31] Such factual findings shall not be disturbed, unless: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[32]

We find herein a proper application of the exception to the rule. In the case at bar, the findings of fact are conflicting. The Provincial Adjudicator and the Court of Appeals were in concurrence that no tenancy relationship existed between the parties. In contrast, the DARAB ruled that petitioners are *bona fide* tenants of the subject landholding.

After a thorough evaluation of the records, we conclude that petitioners failed to adduce substantial evidence to show the existence of all the indispensable requisites for the constitution of a tenancy relationship. We shall address the elements of tenancy[33] *seriatim* as they apply to the instant Petition.

---

[31] *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 24 (2000), citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 845-846 (1998).

[32] *Sarmiento v. Court of Appeals, id.* at 846.

[33] In order for a tenancy agreement to arise, it is essential to establish all its indispensable elements, *viz:* 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee. (*Philippine Overseas Telecommunications Corporation v. Gutierrez, supra* note 25.)

At the outset, the parties do not appear to be the landowner and the tenants. While it appears that there was personal cultivation[34] by petitioners and their predecessors-in-interest of the subject landholding, what was established was that petitioners' claim of tenancy was founded on the self-serving testimony of petitioner Rodolfo Cornes that his predecessors-in-interest had been in possession of the landholding for more than 30 years and had engaged in a "50-50" sharing scheme with JOSEFINA and JOSEFINA's grandmother, the previous owner thereof. Self-serving statements in pleadings are inadequate; proof must be adduced. [35] Such claims do not suffice absent concrete evidence to support them. The burden rests on the shoulders of petitioners to prove their affirmative allegation of tenancy, which burden they failed to discharge with substantial evidence. Such a juridical tie must be aptly shown. Simply put, he who alleges the affirmative of the issue has the burden of proof, and from the plaintiff in a civil case, the burden of proof never parts.[36] The same rule applies to administrative cases. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.[37] While it might have been shown and not contested that petitioners' predecessors-in-interest, namely JACINTO, PABLO, JUANITO and FRANCISCO[38] occupied

---

[34] There is personal cultivation if the tenant (lessee) cultivates the land himself or with the aid of the immediate farm household, which refers to the members of the family of the tenant (lessee) and other persons who are dependent upon him for support and who usually help him in the activities. (See *Sps. Romero v. Tan,* 468 Phil. 224 [2004].)

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

[36] *Asian Construction and Development Corporation v. Tulabut,* G.R. No. 161904, 26 April 2005, 457 SCRA 317, 326, citing *Manongsong v. Estimo,* 452 Phil. 862, 877 (2003).

[37] *Tam v. Regencia,* A.M. No. MTJ-05-1604, 27 June 2006, 493 SCRA 26, citing *Go v. Achas,* A.M. No. MTJ-04-1564, 11 March 2005, 453 SCRA 189, 195.

[38] CA *rollo,* pp. 20-21.

the subject landholding as tillers thereof, the records support the fact that their occupancy was in the nature of hired laborers of JOSEFINA. This was the factual finding of the Provincial Adjudicator which was seconded by the Court of Appeals. On the other hand, there is evidence to support that the subject landholding was not tenanted. As can be gleaned from the Entry No. E-17-7182,[39] annotated on 2 June 1977 at the back of TCT No. 103275, covering the subject landholding in the name of JOSEFINA, the same was not tenanted. Moreover, Entry No. E-22-4361, dated 26 March 1982, also annotated on the aforesaid certificate of title, is explicit that the subject landholding is not tenanted.[40] Further, the records reveal that petitioners' predecesssors-in-interest, namely PABLO, JACINTO, FRANCISCO and JUANITO, executed an affidavit on 8 December 1988, attesting that they were working on the subject landholding as "hired laborers only." These facts taken together were deemed by both the Provincial Adjudicator and the Court of Appeals to be corroborative of the entries annotated on TCT No. 103275 that the subject landholding was indeed not tenanted, and that petitioners' predecessors-in-interest were hired laborers of JOSEFINA. Such type of occupation on the subject landholding does not create a presumption of tenancy in petitioners' favor. Clearly, the fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy.[41]

Neither was it shown to the satisfaction of this Court that there existed a sharing of harvests in the context of a tenancy relationship between petitioners and/or their predecessors-in-interest and JOSEFINA. Jurisprudence is illuminating to the effect that to prove such sharing of harvests, a receipt or any other evidence must be presented.[42] None was shown. No receipts

---

[39] *Rollo*, p. 142 and its dorsal page.

[40] *Id.* at 142.

[41] *VHJ Construction and Development Corporation v. Court of Appeals*, *supra* note 26.

[42] *Id.*

were presented as testaments to the claimed sharing of harvests. The only evidence submitted to establish the purported sharing of harvests was the testimony of petitioner Rodolfo Cornes. The sharing arrangement cannot be deemed to have existed on the basis alone of petitioner Rodolfo Cornes's claim. It is self-serving and is without evidentiary value. Self-serving statements are deemed inadequate; competent proof must be adduced.[43] If at all, the fact alone of sharing is not sufficient to establish a tenancy relationship.[44]

We also sustain the conclusion reached by the Provincial Adjudicator and the Court of Appeals that the testimony of Araceli Pascua, an employee of the DAR in Victoria, Tarlac, that the subject landholding was tenanted cannot overcome substantial evidence to the contrary. To prove the alleged tenancy no reliance may be made upon the said public officer's testimony. What cannot be ignored is the precedent ruling of this Court that the findings of or certifications issued by the Secretary of Agrarian Reform, or his authorized representative, in a given locality concerning the presence or absence of a tenancy relationship between the contending parties, are merely preliminary or provisional and are not binding upon the courts.[45] This ruling holds with greater effect in the instant case in light of the fact that petitioners, as herein shown, were not able to prove the presence of all the indispensable elements of tenancy.

The element of consent in the creation of the tenancy relationship was sorely missing. As was seen earlier, even petitioners' predecessors-in-interest were unequivocal in their admission that they worked as hired laborers on the subject landholding. The intent, if any, to institute them as tenants of the landholdings was debunked by their very admission.

---

[43] *Id.*, citing *Bejasa v. Court of Appeals*, 390 Phil. 499, 508 (2000).

[44] *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, 12 March 2007, 518 SCRA 202, 215.

[45] *Oarde v. Court of Appeals*, 345 Phil. 457, 469 (1997); *Bautista v. Mag-isa Vda. de Villena*, *supra* note 28.

All the requisites[46] must concur in order to create a tenancy relationship between the parties and the absence of one or more requisites is fatal to petitioners' cause. It cannot even make the alleged tenant a *de facto* tenant as contradistinguished from a *de jure* tenant.[47] This is so because unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the Government under existing tenancy laws.[48]

One glaring factor that strikes the mind of this Court is the fact that petitioners did not implead JOSEFINA, the seller of the subject landholding, in any of their Complaints filed below. JOSEFINA, who is a party [49] to the said contract of sale, is an indispensable party. An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest.[50] As a party to the contract of sale, which petitioners seek to declare voided and annulled, there cannot be a determination between the parties already before the court, a determination that is effective, complete, or equitable[51] without impleading JOSEFINA; hence, rendering their action dismissible. From the beginning, this was a legal hindrance which petitioners were not able to successfully overcome. It is hornbook

---

[46] *Philippine Overseas Telecommunications Corporation v. Gutierrez, supra* note 25.

[47] *VHJ Construction and Development Corporation v. Court of Appeals, supra* note 26 at 399, citing *Caballes v. Department of Agrarian Reform*, G.R. No. 78214, 5 December 1988, 168 SCRA 247, 254. The Court in *Heirs of Nicolas Jugalbot* elucidated that the requisites that all elements of a tenancy relationship must be established to be present is because the security of tenure guaranteed by our tenancy laws may be invoked only by tenants *de jure*, not by those who are not true and lawful tenants."

[48] *Solmayor v. Arroyo*, G.R. No. 153817, 31 March 2006, 486 SCRA 326, 348.

[49] *Papa v. A.U. Valencia and Co., Inc.*, G.R. No. 105188, 23 January 1998, 284 SCRA 643, 654.

[50] *Metropolitan Bank & Trust Company v. Hon. Alejo*, 417 Phil. 303, 315 (2001).

[51] *Id*.

doctrine that the joinder of all indispensable parties must be made under *any and all conditions*, their presence being a *sine qua non* for the exercise of the judicial power.[52] When an indispensable party is not before the court, the action should be dismissed.[53]

B. Compensation Package Agreement

For a wholistic determination of the issues in the case at bar, we proceed to consider the ruling of the Court of Appeals on the compensation package agreement (compensation agreement) between petitioners and their predecessors-in-interest and respondent LEAL REALTY. On this matter, the Court of Appeals held that notwithstanding the lack of tenancy relationship, the compensation agreement must be respected.[54] However, we note that the aforesaid finding concerning the compensation package was not incorporated by the Court of Appeals in the dispositive portion of its 31 March 2005 Decision. The Court of Appeals, in affirming the Decision of the Provincial Adjudicator, merely reinstated the latter's Decision, which was silent on the manner in which the compensation agreement may be settled.

We affirm the ruling of the Court of Appeals that the compensation package agreement must be respected.

As evident from the records, on 10 August 1988, the compensation agreement[55] was particularized, as follows:

Relative to the Omaña property per T.C.T. No. 103275 now owned by LEAL REALTY CENTRUM CO., INC., hereunder is the compensation package for you:

---

[52] *De Galicia v. Mercado,* G.R. No. 146744, 6 March 2006, 484 SCRA 131, 136-137, citing *Arcelona v. Court of Appeals,* 345 Phil. 250, 267 (1997).

[53] *Id.*

[54] *Rollo,* p. 691.

[55] Set forth in a letter from LEAL REALTY CENTRUM CO., INC. and its Managing Director Ernesto M. Legaspi addressed to and with the conforme of Pablo Cornes, Jacinto Cornes, Francisco Gadiano and Juanito Robles, dated 10 August 1988; DARAB records, pp. 19-20.

1. **The amount of PESOS: ONE HUNDRED SIXTY THOUSAND ONLY (₱160,000.00) to be prorated according to the area apportioned to you with terms as follows:**

   a. ₱10,000.00 – payable upon signing of affidavit and upon issuance of clearance by the Ministry of Agrarian Reform (MAR). Oct. 17, 1988

   b. ₱20,000.00 – payable upon issuance of locational clearance by Housing & Land Use Regulatory Board (HLRS) Nov. 17, 1988.

   c. ₱65,000.00 – payable on or before Dec. 15, 1988 upon the beginning of project.

   d. ₱65,000.00 – payable upon relocation to new residential area- 2,500 square meters more or less.

2. The area across the railroad on the southern portion of the property will be given free to you as your work area.

3. **An area of 2,500 square meters will be given free to you as your residential area which you will occupy within a year from todate. (sic)**

4. We will provide trucking services in transporting your home paraphernalia.

5. You are given first priority as your workforce recruitment scheme for manual labor.

6. USAGE OF LAND:
   The property can be used for livelihood while it is not yet needed by the owner however, the term and condition of the usage will be at the discretion of the owner. (Emphasis supplied.)

In addition, the compensation agreement was set forth in more detail in a Memorandum dated 6 January 1989,[56] stating thus:

January 6, 1989

MESSRS. JUANITO ROBLES
PABLO CORNES
JACINTO CORNES
FRANCISCO GADIANO

[56] *Id.* at 98.

Brgy. Bulo, Victoria
Tarlac

GENTLEMEN:

As agreed the following would be the terms and conditions of the land located after the *barangay* road (ricefield consisting of six (6) hectares and sugarland of nine (9) hectares estimatedly erpsectively). (sic)

It is understood and agreed that within a period of two (2) years from January 1, 1989 to December 31, 1990, you can cultivate the riceland covering an area of six (6) hectares per attached plan, and appropriate for yourselves the fruits thereof after which LEAL REALTY CENTRUM CO., INC. will exclusively cultivate and operate the said parcels of Riceland without need of any demand for you to surrender possession thereof.

As regards the sugarland consisting of seven (7) hectares per attached location plan, you will cultivate the same within a period of two (2) years from January 1, 1989 to December 31, 1990 and divide the fruits and expenses thereof equally between yourselves and LEAL REALTY CENTRUM CO., INC. through MR. FRANCISCO RIVERA, our Farm Supervisor, who is duly authorized to transact in our behalf.

On the third year thereof, that is, on January 1, 1991 LEAL REALTY CENTRUM CO., INC., will takeover the cultivation of said parcel of land exclusively, without need of any further demand for you to surrender possession thereof.

It is also agreed and understood that you are freeing LEAL REALTY CENTRUM CO., INC. and LEAL HAVEN, INC., from any and all further civil or criminal liabilities which may arise out of this usufructuary contract and that you have entered this contract on your free and voluntary will by signing on the spaces provided for below.

Very truly yours,
LEAL REALTY CENTRUM CO., INC.

(sgd.)

ERNESTO M. LEGASPI
Managing Director

CONFORME:

(sgd.) JUANITO ROBLES	(sgd.) PABLO CORNES
(sgd.) JACINTO CORNES	(sgd.) FRANCISCO GADIANO

Due to LEAL REALTY's failure to pay the full amount as contained in the compensation agreement, petitioners were allowed to continue tilling the land for their sole benefit until such time that it is able to pay the balance thereof. On 16 February 1991, Ernesto M. Legaspi as Managing Director of LEAL REALTY sent a letter[57] to JACINTO, which is worded in like manner as the letters addressed to PABLO, JUANITO and FRANCISCO, except as to amount owed, to wit:

Feb. 16, 1991

MR. Jacinto Cornes

BRGY. BULO, VICTORIA, TARLAC

Under our compensation package dated August 10, 1988 and the Memorandum dated January 6, 1989 on our Victoria property (Omaña Property), you have been paid so far the total sum of ₱31,000.00 leaving a balance of ₱27,000.00 (which includes ₱2,000.00 representing your unrealized harvest for that piece of lot which had been included in the simple subdivision).

In this regard, please be advised that because of our inability to pay you the balance, you may continue working in the property and continue appropriating for yourself the fruits thereof until we shall have paid you. In other words, we are not yet taking over exclusive cultivation of the area under our agreement but will do so upon payment to you of the balance.

Very truly yours,
(sgd.)
ERNESTO M. LEGASPI
Managing Director

---

[57] *Id.* at 22.

Therefore, LEAL REALTY may not be allowed to ignore the terms of the compensation agreement on the premise that petitioners have long been tilling the land for their sole benefit. The terms of the compensation agreement must be respected.

The records show that out of the amount of ₱160,000.00 stated in the compensation package, LEAL REALTY has already paid ₱114,000.00 thereof, leaving a balance of ₱46,000.00. This amount should, thus, be paid to JACINTO, PABLO, JUANITO and FRANCISCO (or their heirs, where applicable) by LEAL REALTY in accordance with the compensation agreement. In the same vein, LEAL REALTY is enjoined to respect the terms of the compensation agreement by turning over the 2,500 square-meter lot[58] to JACINTO, PABLO, JUANITO, and FRANCISCO as described therein.

Finally, anent the question on the coverage of the subject landholding under the CARP, it pays well to heed that the jurisdiction over the aforesaid issue is within the proper confines of the DAR Secretary, pursuant to DARAB Revised Rules, Rule II, Section 1(g), as well as Section 2 of Administrative Order No. 06-00, providing for the Rules of Procedure for Agrarian Law Implementation Cases, granting exclusive jurisdiction to the DAR Secretary in matters involving the classification and identification of landholdings for coverage under the CARP, including the identification, qualification or disqualification of potential farmer-beneficiaries.

WHEREFORE, the instant Petition is *DENIED*. The Decision and Resolution of the Court of Appeals, dated 31 March 2005 and 5 April 2005, respectively, are *AFFIRMED with MODIFICATIONS*, to wit:

(1) Respondent LEAL REALTY are DIRECTED to PAY JACINTO, PABLO, JUANITO, and FRANCISCO (and their heirs, where applicable) the amount of ₱46,000.00

---

[58] Described in the compensation package, thus:

3. An area of 2,500 square meters will be given free to you as your residential area which you will occupy within a year from to date (sic).

to be pro-rated among the latter in accordance with the compensation agreement; and

(2) Respondent LEAL REALTY is ORDERED to TURN OVER THE 2,500 square-meter lot to JACINTO, PABLO, JUANITO, and FRANCISCO (and their heirs, where applicable) per the compensation agreement.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172895. July 30, 2008]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **ASB DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; PETITION FOR REHABILITATION; JURISDICTIONAL REQUIREMENTS. — Being a Petition for Rehabilitation, the Petition of respondent ASBDC must comply with the jurisdictional requirements under Rule IV of the Rules of Procedure on Corporate Recovery. Section 4-1 of the said Rules provides that any of the following: (1) an actually insolvent debtor; (b) a technically insolvent debtor; or (3) a creditor or stockholder of the debtor, can file a petition for rehabilitation.

2. ID.; ID.; ID.; ID.; RESPONDENT ASBDC ADMITTED IN ITS PETITION IT WAS TECHNICALLY INSOLVENT. — Although respondent ASBDC admitted in its Petition that it

had sufficient assets to cover its liabilities, it also alleged that it had foreseen its inability to pay its obligations within a period of one year. This is the very definition of technical insolvency: the inability of the petitioning corporation to pay, although temporarily, for a period longer than one year from the filing of the petition. As a technically insolvent corporation, respondent ASBDC can seek recourse from the SEC through a Petition for Rehabilitation.

3. REMEDIAL LAW; CIVIL PROCEDURE; FINDINGS OF FACTS; ACCORDED GREAT RESPECT AND EVEN FINALITY IF RENDERED BY QUASI-JUDICIAL AGENCIES. — The resolution of a question of fact is normally beyond the authority of this Court, as this Court is not a trier of facts. Moreover, the SEC Hearing Panel found that respondent ASBDC was technically insolvent; the SEC *En Banc* and the Court of Appeals sustained such factual finding; and we likewise find no reason to disturb the same. The factual findings of quasi-judicial agencies, which have acquired expertise due to their jurisdiction being confined to special matters, are generally accorded great respect and even finality, absent any showing that they disregarded evidence or misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.

4. ID.; ID.; ID.; ID.; SUPPORTED BY COURT'S DECISION IN *METROPOLITAN BANK & TRUST COMPANY V. ASB HOLDINGS, INC.* WHERE THE COURT SETTLED THE VALIDITY OF THE REHABILITATION PLAN FOR RESPONDENT ASBDC. — More importantly, on 27 February 2007, this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB Holdings, Inc*. Metropolitan Bank & Trust Company (MBTC) was one of the creditor-mortgagee banks of the ASBDC. MBTC challenged the validity of the Petition for Rehabilitation of the ASB Group of Companies approved by the SEC Hearing Panel on 26 April 2001. We already upheld in said case the validity of the Rehabilitation Plan. We also denied with finality on 6 June 2007 the Motion for Reconsideration of MBTC. The Rehabilitation Plan, like the 4 May 2000 Suspension Order, resulted from the very same proceedings held herein by the SEC Hearing Panel pursuant to the Petition for Rehabilitation filed by the ASB Group of Companies. As we have already

settled the validity of the Rehabilitation Plan, the jurisdictional issues on the Petition for Rehabilitation should also be considered laid to rest. Intrinsic to this Court's affirmation of the validity of the Rehabilitation Plan is its recognition of the jurisdiction acquired by the SEC Hearing Panel over the Petition for Rehabilitation of the ASB Group of Companies.

5. ID.; ID.; *RES JUDICATA*; PARTIES ARE PRECLUDED FROM RELITIGATING ISSUES ACTUALLY LITIGATED AND DETERMINED BY A PRIOR AND FINAL JUDGMENT. — *Res judicata* is a rule that precludes parties from relitigating issues actually litigated and determined by a **prior and final judgment**. Petitioner cites the Decision of this Court in *Montilla v. Court of Appeals*, wherein we held that: Quite elementary is that an order such as that rendered on December 5, 1972, being interlocutory, cannot become final and executory in the sense just described, and cannot bring the doctrine of *res adjudicata* into play at all. Indeed, the correctness of such an interlocutory order may subsequently be impugned on appeal by any party adversely affected thereby, regardless of whether or not he had presented a motion for the reconsideration thereof, if he has otherwise made of record his position thereon.

6. ID.; ID.; LAW OF THE CASE; CASE AT BAR. — While conceding that petitioner UBP is not precluded from questioning the validity of the 4 May 2000 Suspension Order on the basis of *res judicata*, it is, however, barred from doing so by the principle of **law of the case**. When the validity of such interlocutory order has already been passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. **Law of the case** has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." Hence, that the 4 May 2000 Suspension Order is valid, as we already upheld in G.R. No. 153830, is the controlling legal rule of decision between petitioner UBP and respondent ASBDC in the Petition at bar. The same is true, whether the decision of this Court in G.R. No. 153830 was correct on general principles or not, and without a showing by petitioner

UBP that the facts on which G.R. No. 153830 was predicated are no longer the same facts of the case presently before us.

7. COMMERCIAL LAW; CORPORATION CODE; RULES OF PROCEDURE ON CORPORATE RECOVERY; "CLAIM"; WHAT TERM INCLUDES; CASE AT BAR. — Despite having the authority to foreclose the mortgaged properties under the Mortgage Trust Indenture (MTI), the extrajudicial foreclosure initiated by petitioner UBP, nevertheless, remains invalid for being a blatant violation of the 4 May 2000 Order of the SEC Hearing Panel suspending all claims against respondent ASBDC. The 4 May 2000 Suspension Order of the SEC Hearing Panel, the validity of which is now unquestionable, likewise suspends the exercise by petitioner UBP of its right under Section 7.04 of the MTI. The 4 May 2000 Order suspended "all actions or **claims** against pending or still to be filed before any tribunal, office, board, body, and/or Commission against ASB Group of Companies." Section 1-1 of Rule I of the Rules of Procedure on Corporate Recovery states that the term **claim** "shall include all claims or debts of whatever character against a debtor or its property, whether secured or unsecured," and under which definition clearly falls the obligation of respondent ASBDC to petitioner UBP.

APPEARANCES OF COUNSEL

Valerio Ong Saavedra Vicerra & Protasio Law Offices for petitioner.

Javier Jose Mendoza & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review seeking to set aside the Decision[1] dated 31 May 2005 and Resolution dated 31 May 2006 of the Court of Appeals in CA-G.R. SP No. 85780 which sustained the Resolution dated 6 July 2004 of the Securities and Exchange

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 72-91.

Commission (SEC) *En Banc* in SEC-EB Case No. 12-03-08 which, in turn, affirmed the Resolution dated 11 December 2003 of the SEC Hearing Panel in SEC Case No. 05-00-6609.

I

FACTS

The factual and procedural antecedents of this case are as follows:

The Indenture Contracts

On 29 May 1989, respondent ASB Development Corporation (ASBDC), a domestic corporation organized and existing under Philippine laws, executed a Mortgage Trust Indenture (MTI) and, thereafter, supplemental indentures, in favor of Rizal Commercial Banking Corporation (RCBC), as trustee for the following creditor banks: RCBC itself, petitioner Union Bank of the Philippines (UBP) and United Coconut Planters Bank (UCPB). Under said MTI and supplemental indentures, the creditor banks granted respondent ASBDC a loan in the total amount of ₱1.198 billion, ₱122 million of which was extended by petitioner UBP. As security for the loan, respondent ASBDC mortgaged to RCBC real properties covered by Transfer Certificates of Title (TCTs) No. 9836, No. 9837, and No. 9838. Petitioner UBP has an aliquot share of 10.32% in said mortgages as security for its loan to respondent ASBDC.

The Petition for Rehabilitation

On 2 May 2000, respondent ASBDC, together with ASB Holdings Inc., ASB Realty Corporation, ASB Land Inc., ASB Finance Inc., Makati Hope Christian School Inc., Bel-Air Holdings Corporation, Winchester Trading Inc., VYL Development Corporation, and Neighborhood Holdings Inc. (collectively referred to as the ASB Group of Companies), as affiliated companies commonly owned by Mr. Luke C. Roxas, filed with the SEC Securities and Investigations Clearing Department (SICD) a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings. To take cognizance of the said Petition, the SEC Hearing Panel was formed composed of three hearing officers from SICD.

Petitioner UBP, Metropolitan Bank and Trust Company (Metrobank), RCBC, Philippine National Bank (PNB), Prudential Bank, UCPB and Equitable-PCI Bank opposed the petition for rehabilitation of the ASB Group of Companies.

On 4 May 2000, the SEC Hearing Panel set for hearing on 22 May 2000 the prayer of the ASB Group of Companies for suspension of payment and the creation of a management committee and/or the appointment of a rehabilitation receiver. For the time being, the SEC Hearing Panel issued a sixty-day suspension order against all actions for claims against the ASB Group of Companies pending or still to be filed before any court, office, board, body and/or tribunal.

The SEC Hearing Panel then appointed Atty. Monico V. Jacob as Interim Receiver and ordered the latter to post a bond in the amount of ₱200,000.00 within ten days from notice. Atty. Jacob refused the appointment, leading to the appointment instead of Fortunato B. Cruz. The SEC Hearing Panel enjoined the ASB Group of Companies from disposing of their properties in any manner whatsoever except in the ordinary course of business and from making payments of its liabilities outstanding as of the date of the filing of its petition for rehabilitation.

The SEC Hearing Panel subsequently issued various Orders extending the suspension order it initially issued on 4 May 2000 until 29 April 2001.

On 10 October 2000, the SEC Hearing Panel issued an Order giving due course to the Petition for Rehabilitation.

The SEC Hearing Panel approved on 26 April 2001 the Rehabilitation Plan of the ASB Group of Companies. On the same day, the SEC Hearing Panel appointed Interim Receiver Fortunato B. Cruz as Rehabilitation Receiver of the ASB Group of Companies.

Related Cases

In the course of the foregoing proceedings before the SEC Hearing Panel, the following cases arose:

Petitioner UBP and PNB assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in a Petition for *Certiorari Ad Cautelam*, docketed as CA-G.R. SP No. 66649, wherein they prayed *inter alia* that the said Order be set aside. The Court of Appeals later dismissed CA-G.R. SP No. 66649 in its 31 January 2002 Resolution, and denied the Motion for Reconsideration of petitioner UBP and PNB in its 4 June 2002 Resolution. Petitioner UBP and PNB went to this Court via a Petition for Review on *Certiorari*, docketed as G.R. No. 153830, challenging the Resolutions dated 31 January 2002 and 4 June 2002 of the Court of Appeals in CA-G.R. SP No. 66649, but their petition was dismissed by this Court in a 16 September 2002 Resolution. Entry of Judgment was made in G.R. No. 153830 on 28 February 2003.

Petitioner UBP would also join a consortium of creditor banks which filed a Petition for Review on *Certiorari* with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the SEC *En Banc* seeking to annul the 10 October 2000 Order of the SEC Hearing Panel giving due course to the Petition for Rehabilitation of the ASB Group of Companies. Said consortium subsequently filed a Supplemental Petition with the SEC *En Banc* praying for the enjoinment of the implementation of the 27 October 2000 Order of the SEC Hearing Panel which granted yet again the motion of the ASB Group of Companies for extension of the 4 May 2000 Suspension Order. The SEC *En Banc* dismissed this Petition in its 11 November 2003 Resolution. Petitioner UBP, however, no longer participated when the PNB and Equitable-PCI Bank assailed the 11 November 2003 Resolution of the SEC *En Banc* before the Court of Appeals in CA-G.R. SP No. 82800.

The Extrajudicial Foreclosure and Sale

In the meantime, two months after the SEC Hearing Panel approved the Rehabilitation Plan for the ASB Group of Companies and during the pendency of CA-G.R. SP No. 66649 before the Court of Appeals, petitioner UBP, citing the failure of respondent ASBDC to pay its indebtedness, filed on 27 July 2001 with the Office of the Clerk of Court of the Regional Trial Court (RTC)

of Mandaluyong City, a Notice of Extrajudicial Sale of Properties under Act No. 3135, as amended, over its 10.32% participation in the mortgage of real properties covered by TCTs No. 9836, No. 9837, and No. 9838 securing the loans of respondent ASBDC under the MTI and supplemental indentures.

On 24 August 2001, Notary Public Jimmy D. Lacebal auctioned the mortgaged properties of respondent ASBDC, during which petitioner UBP submitted the highest bid in the amount of ₱178,635,330.48. Atty. Lacebal issued a Certificate of Sale over the said properties in favor of petitioner UBP. Vice Executive Judge Japar D. Dimaampao of the Mandaluyong City RTC approved the Certificate of Sale.

Petitioner UBP then filed a request with the Register of Deeds of Mandaluyong City for registration of the Certificate of Sale on TCTs No. 9836, No. 9837 and No. 9838. On 28 August 2001, the Register of Deeds requested RCBC (the trustee for petitioner UBP and the other creditor-mortgagee banks under the MTI and supplemental indentures) to present the owner's duplicate copies of said certificates of title for the purpose of annotating the Certificate of Sale on the same. RCBC, however, failed to act on said request.

In a letter dated 5 December 2001, petitioner UBP requested the Register of Deeds of Mandaluyong City to just effect the registration and annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 which were on file with the Registry of Deeds. The Register of Deeds, in a reply-letter dated 8 December 2002, denied the request of petitioner UBP to merely annotate the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838 since such annotation partakes of the nature of a voluntary dealing on registered land wherein the production of the owner's duplicate copies of the certificates of title is necessary.

On 22 January 2002, petitioner UBP filed a Motion for Reconsideration with the Register of Deeds of Mandaluyong City. However, the Register of Deeds maintained its original stand and denied the motion on 4 February 2002.

Petitioner UBP thus filed on 7 February 2002 a *Consulta* with the Land Registration Authority (LRA) soliciting a resolution reversing the denial of its request for annotation of the Certificate of Sale on the original copies of TCTs No. 9836, No. 9837 and No. 9838.

On 3 September 2003, respondent ASBDC filed before the SEC Hearing Panel a Motion and a Supplement dated 15 September 2003 praying for the nullification of the extrajudicial sale of its properties conducted on 24 August 2001. The SEC Hearing Panel issued a Resolution dated 11 December 2003 granting said Motion of respondent ASBDC, to wit:

> WHEREFORE, premises considered, petitioners' Motion dated 3 September 2003 is GRANTED. Accordingly, all proceedings pertaining to and in connection with the extrajudicial sale caused by Union Bank of the Philippines involving properties covered by TCTs Nos. 9836, 9837 and 9838 issued by the Registry of Deeds of Mandaluyong City are hereby ANNULLED and SET ASIDE.[2]

Petitioner UBP filed with the SEC *En Banc* a Petition for Review on *Certiorari* assailing the afore-quoted Resolution of the SEC Hearing Panel, which was docketed as SEC-EB Case No. 12-03-08. Petitioner UBP contended that the annulment of the extrajudicial sale was contrary to law, arguing that:

1. Article 1308 of the Civil Code of the Philippines on mutuality of contracts provides "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

   In signing the MTI and its Supplemental, ASBDC had agreed and bound itself to comply with all the provisions of the contract.

2. ASBDC violated the proscription against unilateral cancellation of contracts under Article 1159 of the Civil Code;

3. Respondent SEC Hearing Panel amended or expanded the rule making powers in suspending all actions and claims

---

[2] *Rollo,* p. 90.

against ASBDC immediately after the petition for rehabilitation is filed;

4. Contravened the constitutional proscription against impairment of contracts;

5. Deprived Union Bank of its substantial right over its property without due process of law;

6. Unilaterally revoked and/or nullified the right of a secured creditor like Union Bank with existing contractual rights;

7. Amended and/or modified existing and valid contracts between the parties, without their consent.

On 6 July 2004, the SEC *En Banc* issued a Resolution denying the Petition, thus:

WHEREFORE, the Petition for Review on *Certiorari* assailing the Resolution dated 11 December 2003 issued by Respondent Hearing Panel is hereby DENIED for lack of merit.[3]

In so doing, the SEC *En Banc* held that the SEC Hearing Panel acted in accordance with Section 6(c) of Presidential Decree No. 902-A[4] as amended, which granted to the SEC the following power:

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: x x x *Provided, finally,* That **upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to the Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court,**

[3] *Id.* at 227.

[4] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT.

tribunal, board or body shall be suspended accordingly. (Emphasis supplied.)

CA-G.R. SP No. 85780

Petitioner UBP then sought recourse with the Court of Appeals *via* a Petition for Review, docketed as CA-G.R. SP No. 85780, seeking the reversal of the 6 July 2004 Resolution of the SEC *En Banc*. It argued that respondent ASBDC should not have filed a Petition for Rehabilitation as the latter itself admitted in the same petition that it possessed sufficient properties to cover its obligations, but only that it foresaw its inability to pay its obligations within a period of one year.

On 31 May 2005, the Court of Appeals rendered the assailed Decision dismissing the Petition for Review, the dispositive of which reads:

WHEREFORE, premises considered, the PETITION FOR REVIEW is hereby DISMISSED. Accordingly, the Securities and Exchange Commission *En Banc's* Resolution dated July 6, 2004 and the Securities and Exchange Commission's Hearing Panel's Resolution dated December 11, 2003 are hereby affirmed *in toto*.[5]

The Court of Appeals cited the Rules of Procedure on Corporate Recovery which provides for two distinct remedies for a financially distressed corporation, namely: (1) **suspension of payments under Section 3-1, Rule III**; and (2) **rehabilitation proceedings under Section 4-1, Rule IV**. These provisions read:

SECTION 3-1. Suspension of Payments. — Any debtor which possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due may petition the Commission that it be declared in the state of suspension of payments.

x x x x x x x x x

SECTION 4-1. Who may petition. — A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which

[5] *Rollo*, p. 227.

may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies operations or finances, may petition the Commission to be placed under rehabilitation.

Any of the creditors or stockholders of the debtor may file the petition on its behalf.

The Court of Appeals explained that a debtor or petitioning corporation may have sufficient assets to pay for all of its obligations but foresees the impossibility of paying them when they respectively fall due, necessitating a suspension of payments for at least one year. Despite such declaration of solvency, the petitioning corporation may still be found to be subsequently unable to pay its obligations for a period longer than one year and be considered by the SEC as technically insolvent under Sections 3-12[6] and 3-13[7] of Rule III of the Rules of Procedure on Corporate Recovery. Section 3-13 provides, *inter alia*, that if during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actually or technically, the SEC may, instead of terminating the proceedings for suspension of payments, treat the petition as one for rehabilitation of the debtor.

Hence, the Rules of Procedure on Corporate Recovery does not preclude a solvent corporation or debtor from filing a petition for rehabilitation instead of just a petition for suspension of

---

[6] SECTION 3-12. Technical Insolvency of Petitioner. If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

[7] SECTION 3-13. *Supervening Insolvency or Violation of Suspension Order*. — If at any time during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order, or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon, the pertinent provisions of the succeeding Rule shall govern the proceedings.

payments because such temporary inability to pay its obligations out of its assets may extend beyond the period of one year, or a solvent corporation may become actually insolvent in the interim. The requirements and procedures in a petition for suspension of payments and petition for rehabilitation are indeed entirely different and distinct from one another; nonetheless, the petitioning corporation which seeks temporary relief and assistance in the payment of its obligations falling due, but may still have sufficient assets to cover the same, may already file at the first instance a petition for rehabilitation under Rule IV. Given the foregoing, the Court of Appeals found that the Petition for Rehabilitation of the ASB Group of Companies, which includes respondent ASBDC, is warranted under the circumstances.

The Court of Appeals further clarified that under either of the two remedies available, **suspension of payments** or **rehabilitation**, a suspension order against all claims, proceedings or actions against the petitioning corporation is available as immediate relief to the distressed corporation pursuant to Sections 3-4[8] and 3-8[9] of Rule III and Section

[8] SECTION 3-4. Effect of Filing of Petition. Upon the filing of the petition, an order shall be issued by the Commission suspending all actions and proceedings to enforce payment of all claims against the petitioner for a period of thirty (30) days from the issuance thereof but enjoining the petitioner during such period from selling, encumbering or transferring any of its properties in any manner or for whatever purpose, or from making any payment or any application thereof without the approval of the Commission. The order shall be automatically vacated upon the lapse of the said period unless extended or the period is granted. Its life may be extended only upon proof that petitioner will suffer irreparable injury unless so extended. In any event, the total period of the extension allowed may not exceed six (6) months.

[9] SECTION 3-8. — Suspension Order. If, after hearing, the solvency of the petitioner and the temporary inability to pay are established, the Commission shall issue an order suspending payment of all claims against the petitioner, and all actions and proceedings to enforce the same, during the period of temporary inability which in no case shall exceed one (1) year from the filing of the petition. The order shall also direct the petitioner to resume payment of its obligations upon the lapse of said period in accordance with the Repayment Schedule approved by the Commission. The order may impose on the petitioner such terms and conditions as are necessary for the protection of the creditors and shall cover all actions for the recovery of the property being used by the

4-4[10] of Rule IV. During the pendency of either proceeding, a management committee may be created upon agreement of the parties or upon showing that there is imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or those in its legal possession, or paralysis of its business operations, in accordance with Section 5-1.[11]

In its Decision of 31 May 2005, the Court of Appeals also affirmed the validity of the 4 May 2000 Order of the SEC Hearing Panel suspending all claims already pending or still to be filed against the ASB Group of Companies. While said Suspension Order was interlocutory, it could no longer be assailed since the propriety of its issuance had already been passed upon several times. Petitioner UBP and other creditor banks had already challenged the Suspension Order when they filed with the SEC Hearing Panel their Comment/Opposition[12] to the Petition for Rehabilitation. The said Comment/Opposition was denied by the SEC Hearing Panel in its 10 October 2002 Order, which in effect upheld the validity of the Suspension Order. The consortium of creditor banks, including petitioner UBP, then

---

petitioner in the normal course of its business operations even though such property belongs to a creditor.

In any event, the petition shall be deemed *ipso facto* denied and dismissed if no decision was taken thereon by the Commission after the lapse of two hundred and forty (240) days from the filing thereof. In such case, all orders issued in the proceedings are deemed automatically vacated.

[10] SECTION 4-4. Effect of Filing of the Petition. — Immediately upon the filing of a petition, the Commission shall issue an Order (a) appointing an Interim Receiver and fixing his bond; (b) suspending all actions and proceedings for claims against the debtor; (c) prohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the normal course of business in which the debtor is engaged; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of the filing of the petition; x x x.

[11] SECTION 5-1. — Creation of a Management Committee. Upon agreement of the parties, or upon showing that there is imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or those in its legal possession, or paralyzation of its business operations, the Commission may create a management committee for the debtor at any time during, the pendency of the petition for suspension of payments or for rehabilitation.

[12] CA *rollo*, pp. 109-119.

filed a Petition for *Certiorari* with the SEC *En Banc*, which was likewise dismissed by the SEC *En Banc* in its 11 November 2003 Resolution. Of the creditor banks belonging to the consortium, only the PNB and Equitable-PCI Bank persisted in questioning the 11 November 2003 Resolution of the SEC *En Banc* before the Court of Appeals in CA-G.R. SP No. 82800; thus, the 11 November 2003 Resolution of the SEC *En Banc* upholding the validity of the 4 May 2000 Suspension Order is already final and executory insofar as petitioner UBP is concerned.

The Court of Appeals added that petitioner UBP, together with PNB, also assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in CA-G.R. SP No. 66649. When the Court of Appeals dismissed CA-G.R. SP No. 66649 in its Resolutions dated 31 January 2002[13] and 4 June 2002, petitioner UBP and PNB filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 153830. This Court likewise dismissed G.R. No. 153830 in a 16 September 2002 Resolution, and Entry of Judgment was made in G.R. No. 153830 on 28 February 2003. Therefore, the 4 May 2000 Suspension Order by the SEC Hearing Panel can no longer be questioned by petitioner UBP.

Finally, the Court of Appeals noted that when petitioner UBP filed its petition for extrajudicial foreclosure on 27 July 2001 and caused the holding of the public auction of the mortgaged properties of respondent ASBDC on 21 August 2001, the SEC Hearing Panel had already issued its Order dated 4 May 2000 suspending all actions for claims against respondent ASBDC, whether pending or still to be filed. In fact, on such dates, the SEC Hearing Panel had already approved the Rehabilitation Plan of the ASB Group of Companies in an Order dated 26 April 2001. The appointment of a Rehabilitation Receiver effectively suspended actions for claims against respondent ASBDC.[14]

---

[13] *Id.* at 524.

[14] SEC Rules of Procedure on Corporate Recovery, Rule IV, Section 4-21.

On 24 June 2005, petitioner UBP filed a Motion for Reconsideration of the foregoing Decision. On 31 May 2006, the Court of Appeals issued the assailed Resolution denying the Motion for Reconsideration.

G.R. No. 172895

Petitioner UBP filed the instant Petition for Review on *Certiorari*, setting forth the following assignment of errors for the Court's consideration:

1. With all due respect, the Court of Appeals erred in law when it applied the Rules of Procedure on Corporate Recovery and allowed respondent's application for rehabilitation despite the existence of fatal jurisdictional defects. The Court of Appeals decided a matter not in accord with law and existing jurisprudence.

2. The Court of Appeals erred in ruling that the May 4, 2000 Suspension Order is valid and could no longer be questioned it being a mere interlocutory order which cannot become final and executory.

3. The Court of Appeals erred in ruling that petitioner bank has no power on its own to foreclose the mortgaged property.[15]

II

RULING

SEC Jurisdiction Over the Petition for Rehabilitation

Petitioner UBP alleges that the Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings of respondent ASBDC before the SEC suffers from fatal and jurisdictional defects. Respondent ASBDC cannot file a Petition for Rehabilitation when respondent ASBDC itself alleged in its Petition for Rehabilitation that it possessed sufficient property to cover its obligations. By admitting that it is a solvent corporation, respondent ASBDC cannot file a Petition for Rehabilitation.

---

[15] *Rollo*, p. 398.

Petitioner UBP also argues that respondent ASBDC cannot invoke Sections 3-12[16] and 3-13,[17] Rule III of the Rules of Procedure on Corporate Recovery since the situation contemplated therein is the pendency of a petition for suspension of payments and the supervention of technical insolvency,[18] in which event, the petition for suspension of payments may be dismissed or the petitioning corporation may opt for rehabilitation under Rule IV of the same Rules. They do not apply to the circumstance in which the petitioning corporation erroneously files a petition for rehabilitation even when it has enough assets to cover its liabilities, but would eventually suffer from technical insolvency in the course of the proceedings, finally justifying its rehabilitation. The defect of the petition in the latter case is jurisdictional and precludes the SEC from hearing the petition, and cannot be cured by the subsequent technical insolvency of the petitioning corporation. Petitioner UBP, thus, claims that respondent ASBDC should have filed the "proper petition" with the SEC at the first instance.

Anyhow, petitioner UBP asserts that respondent ASBDC was not able to prove that it was technically insolvent at the time it filed its Petition for Rehabilitation, or that it became so in the course of the hearing by the SEC Hearing Panel of its Petition.

---

[16] Section 3-12. Technical Insolvency of Petitioner. — If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

[17] Section 3-13. Supervening Insolvency or Violation of Suspension Order. — If at any time during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order, or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon the pertinent provisions of the succeeding Rule shall govern the proceedings.

[18] When the petitioning corporation is unable to pay its debts for a period longer than one year.

Rule III of the Rules of Procedure on Corporate Recovery deals specifically with **Petitions for Suspension of Payments**, while Rule IV covers **Petitions for Rehabilitation**.

The title and the contents of the initiatory pleading of respondent ASBDC before the Court of Appeals clearly establish that it is a Petition for Rehabilitation, with a prayer for the suspension of actions and proceedings to supplement the same. The suspension of actions and proceedings for any claims against respondent ASBDC is merely meant to afford respondent ASBDC the opportunity to preserve its assets for later distribution pursuant to its approved rehabilitation plan.

Being a Petition for Rehabilitation, the Petition of respondent ASBDC must comply with the jurisdictional requirements under Rule IV of the Rules of Procedure on Corporate Recovery. Section 4-1[19] of the said Rules provides that any of the following: (1) an actually insolvent debtor; (b) a technically insolvent debtor; or (3) a creditor or stockholder of the debtor, can file a petition for rehabilitation.

Although respondent ASBDC admitted in its Petition that it had sufficient assets to cover its liabilities, it also alleged that it had foreseen its inability to pay its obligations within a period of one year. This is the very definition of technical insolvency: the inability of the petitioning corporation to pay, although temporarily, for a period longer than one year from the filing of the petition.[20]

As a technically insolvent corporation, respondent ASBDC can seek recourse from the SEC through a Petition for Rehabilitation.

---

[19] SECTION 4-1. Who May Petition. — A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies, operations, or finances, may petition the Commission to be placed under rehabilitation.

Any of the creditors or stockholders of the debtor may file the petition on its behalf.

[20] SEC Rules of Procedure on Corporate Recovery, Rule III, Section 3-12.

The reference to Section 3-12 of the Rules of Procedure on Corporate Recovery should be limited only to the definition of technical insolvency provided therein. Section 3-13 and the rest of Rule III of the Rules of Procedure on Corporate Recovery governing Petitions for Suspension of Payments actually have no relevance in the instant Petition.

Neither can the Court sustain the allegation of petitioner UBP that respondent ASBDC failed to prove that it was technically insolvent. Whether respondent ASBDC is indeed technically insolvent is a question of fact. This Court has held that for a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts.[21] The determination of technical insolvency of respondent ASBDC is a question of fact since it will require a review of sufficiency and weight of evidence presented by the parties.

The resolution of a question of fact is normally beyond the authority of this Court, as this Court is not a trier of facts. Moreover, the SEC Hearing Panel found that respondent ASBDC was technically insolvent; the SEC *En Banc* and the Court of Appeals sustained such factual finding; and we likewise find no reason to disturb the same. The factual findings of quasi-judicial agencies, which have acquired expertise due to their jurisdiction being confined to special matters, are generally accorded great respect and even finality, absent any showing that they disregarded evidence or misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[22]

More importantly, on 27 February 2007, this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB*

---

[21] *Reyes v. Court of Appeals*, 328 Phil. 171, 179 (1996); *Manila Bay Club Corporation v. Court of Appeals*, 315 Phil. 805, 820 (1995).

[22] *Id*.

Holdings, Inc.[23] Metropolitan Bank & Trust Company (MBTC) was one of the creditor-mortgagee banks of the ASBDC. MBTC challenged the validity of the Petition for Rehabilitation of the ASB Group of Companies approved by the SEC Hearing Panel on 26 April 2001. We already upheld in said case the validity of the Rehabilitation Plan. We also denied with finality on 6 June 2007 the Motion for Reconsideration of MBTC. The Rehabilitation Plan, like the 4 May 2000 Suspension Order, resulted from the very same proceedings held herein by the SEC Hearing Panel pursuant to the Petition for Rehabilitation filed by the ASB Group of Companies. As we have already settled the validity of the Rehabilitation Plan, the jurisdictional issues on the Petition for Rehabilitation should also be considered laid to rest. Intrinsic to this Court's affirmation of the validity of the Rehabilitation Plan is its recognition of the jurisdiction acquired by the SEC Hearing Panel over the Petition for Rehabilitation of the ASB Group of Companies.

Validity of the Suspension Order

Petitioner UBP argues that the 4 May 2000 Suspension Order of the SEC Hearing Panel is void; consequently, the 6 July 2004 Order of the SEC Hearing Panel nullifying the extrajudicial sale of the mortgaged properties of respondent ASBDC held on 24 August 2001 for being in violation of its 4 May 2000 Suspension Order, is likewise void.

As pointed out by the Court of Appeals, the issue of the validity of the 4 May 2000 Suspension Order was already resolved with finality by no less than this Court in its Resolution dated 16 September 2002 in G.R. No. 153830. As previously stated, petitioner UBP, together with PNB, had already assailed the 4 May 2000 Suspension Order of the SEC Hearing Panel before the Court of Appeals in a Petition for *Certiorari Ad Cautelam* docketed as CA-G.R. SP No. 66649. When the Court of Appeals dismissed the said Petition in its 31 January 2002 Resolution, and denied the Motion for Reconsideration in its 4 June 2002 Resolution, petitioner UBP and the PNB jointly filed a Petition

[23] G.R. No. 166197, 27 February 2007, 517 SCRA 1.

for Review on *Certiorari* with this Court, docketed as 153830, which was denied in a 16 September 2002 Resolution.

However, petitioner UBP refuses to be bound by this Court's ruling in G.R. No. 153830, contending that the 4 May 2000 Suspension Order of the SEC Hearing Panel was merely interlocutory and did not become final. Since the said Order never became final, the principle of *res judicata* is, therefore, not applicable.

Res judicata is a rule that precludes parties from relitigating issues actually litigated and determined by a **prior and final judgment**.[24] Petitioner cites the Decision of this Court in *Montilla v. Court of Appeals*,[25] wherein we held that:

> Quite elementary is that an order such as that rendered on December 5, 1972, being interlocutory, cannot become final and executory in the sense just described, and cannot bring the doctrine of *res adjudicata* into play at all. Indeed, the correctness of such an interlocutory order may subsequently be impugned on appeal by any party adversely affected thereby, regardless of whether or not he had presented a motion for the reconsideration thereof, if he has otherwise made of record his position thereon.

While conceding that petitioner UBP is not precluded from questioning the validity of the 4 May 2000 Suspension Order on the basis of *res judicata*, it is, however, barred from doing so by the principle of **law of the case**. When the validity of such interlocutory order has already been passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. **Law of the case** has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of

---

[24] *De Knecht v. Court of Appeals*, 352 Phil. 833, 847 (1998).

[25] G.R. No. L-47968, 9 May 1988, 161 SCRA 167, 171-172.

the case before the court."[26] Hence, that the 4 May 2000 Suspension Order is valid, as we already upheld in G.R. No. 153830, is the controlling legal rule of decision between petitioner UBP and respondent ASBDC in the Petition at bar. The same is true, whether the decision of this Court in G.R. No. 153830 was correct on general principles or not, and without a showing by petitioner UBP that the facts on which G.R. No. 153830 was predicated are no longer the same facts of the case presently before us.

Power of petitioner UBP to foreclose the mortgaged property

Finally, petitioner UBP claims that the Court of Appeals erred in ruling that petitioner UBP had no power to institute extrajudicial foreclosure of the mortgage on the properties of respondent ASBDC securing the MTI and supplemental indentures. Petitioner UBP claims that under Section 7.16 of Article VII of the MTI, it had the right to initiate foreclosure proceedings.

While it is true that said provision of the MTI confers on any Holder of Participation Certificates, *i.e.*, any of the creditor-mortgagor banks, the right to initiate foreclosure proceedings, such right is the exception rather than the rule and is subject to specific conditions. As provided under Sections 7.04, 7.05, 7.06 and 7.12 of Article VII of the MTI, it is RCBC, as the designated Trustee of the creditor-mortgagor banks under the MTI, which is vested with the primary authority to extrajudicially foreclose the mortgaged properties. The Holders of Participation Certificates are given the right to foreclose the mortgaged property as against the primary authority of RCBC only if the conditions under Section 7.16 of Article VII of the MTI are met. Section 7.16 of the MTI provides:

> Section 7.16. Any HOLDER OF PARTICIPATION CERTIFICATES shall have the right to institute any action or proceeding for the foreclosure of this INDENTURE, or for the appointment of a receiver, or for the exercise of any trust or power conferred upon the TRUSTEE or the prosecution of any remedy available to the TRUSTEE, under

---

[26] *People v. Pinuila*, 103 Phil. 992, 999 (1958).

this INDENTURE, PROVIDED, however, that such HOLDER shall have previously given to the TRUSTEE written notice of the Event of Default on which the HOLDERS of not less than 51% of the total outstanding FACE AMOUNT of the PARTICIPATION CERTIFICATES shall have made WRITTEN REQUEST to the TRUSTEE and shall have given it a reasonable period of time either to proceed to exercise the powers conferred by this INDENTURE or to institute such action, suit or proceeding in its own name, it being understood and intended that **no one** or more HOLDERS of the PARTICIPATION CERTIFICATES shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this INDENTURE by its or their action or to enforce any right hereunder **except in the manner herein provided** or to the extent allowed by law and that all proceedings may only be instituted and maintained and all trusts, powers or remedies of the TRUSTEE exercised by any HOLDER of PARTICIPATION CERTIFICATES availing to the provisions of this Section **in the manner herein provided** and for the pari-passu benefit of all the holders of the PARTICIPATION CERTIFICATES then outstanding. (Emphases supplied.)

Thus, as a general rule, the following circumstances must be present in order that the Holders of Participation Certificates may directly exercise the authority to foreclose mortgaged properties: (1) an event of default by respondent ASBDC occurs; (2) Holders of not less than 51% of the total outstanding face amount of the Participation Certificates have made a written request to RCBC as the trustee that would exercise the powers conferred upon them by the MTI or institute proceedings under their own names; and (3) RCBC as the trustee is given a reasonable time to act on the Holders' written request but fails to do so. It is noted that Section 7.16 of the MTI even emphasized that the Holders of Participation Certificates may exercise their right to institute any action or proceeding for the foreclosure of mortgage only in the manner provided therein.

The Court of Appeals explicitly found that petitioner UBP did not meet the first two of the conditions set forth in Section 7.16 of the MTI. According to the Court of Appeals, the failure of respondent ASBDC to pay its obligation under the MTI and supplemental indentures is legally justified by the issuance of the Order dated 4 May 2000 suspending all claims against

respondent ASBDC and the subsequent approval of respondent's Rehabilitation Plan on 26 April 2001 by the SEC Hearing Panel. It further held that petitioner UBP failed to establish that Holders of at least 51% of the total outstanding face amount of the Participation Certificates had given their written request to RCBC as trustee to exercise their powers under the MTI or institute proceedings under their own names.

Petitioner UBP does not dispute the factual finding by the Court of Appeals that there was non-compliance with the requirement that the Holders of at least 51% of the total outstanding face amount of the Participation Certificates should have given their written request to RCBC as trustee to exercise their powers conferred by the MTI or institute proceedings under their own name. Petitioner UBP, however, maintains that there was an Event of Default, particularly described under Section 7.01(e) as follows:

> Section 7.01. The COMPANY and TIFFANY shall, without the necessity of demand, be in default under this INDENTURE upon the occurrence of any one or more of the following events:
>
> x x x x x x x x x
>
> e. The COMPANY and/or TIFFANY shall file a petition for voluntary bankruptcy, or shall consent to the filing of any such petition, or shall consent to the appointment of a trustee or receiver for the COMPANY and/or TIFFANY for all or any part of its properties, or shall file a petition or answer seeking reorganization or arrangement under any law or statute of the Republic of the Philippines for the relief or aid of the debtor or shall consent to the filing of any such petition, or shall file a petition to take advantage of the debtor's act.[27]

Petitioner UBP then reasons that Section 7.04 of the MTI authorizes the foreclosure of the mortgaged properties of respondent ASBDC even without the written request of the Holders of 51% of the total outstanding face amount of the Participation Certificates, provided that the Event of Default is under Section 7.01(c) or (e) of the MTI. Section 7.04 reads:

---

[27] *Rollo,* pp. 116-117.

Section 7.04. **Except in clauses (c) and (e) of Section 7.01**, no foreclosure of the MORTGAGED PROPERTY or any part thereof may be made unless (i) an Event of Default has occurred as provided for in Section 7.01 and (ii) the HOLDERS of at least 51% of the total outstanding FACE AMOUNT of the PARTICIPATION CERTIFICATES shall have given written instructions to the TRUSTEE to foreclose. The TRUSTEE, within five (5) working days after its receipt of written instructions to foreclose as provided above, shall give written notice to the COMPANY [respondent corporation] that it is foreclosing on the MORTGAGED PROPERTY or any part thereof and shall furnish the other HOLDERS of PARTICIPATION CERTIFICATES who did not give instructions to foreclose, and the TRUSTEE shall have the right and power to foreclose immediately on all the MORTGAGED PROPERTY or any part thereof for all the credits secured by this INDENTURE, judicially or extrajudicially, in accordance with Philippine laws and this INDENTURE.[28]

Petitioner UBP is partially correct on this point. There was indeed an Event of Default under Section 7.01(e) of the MTI when respondent ASBDC filed a Petition for Rehabilitation with the SEC and consented to the appointment of a Receiver; and pursuant to the plain wording of Section 7.04 of the MTI, a foreclosure of the mortgaged properties or a part thereof may be had under the circumstances even without the written request of the Holders of at least 51% of the outstanding face amount of Participation Certificates.

Despite having the authority to foreclose the mortgaged properties under the MTI, the extrajudicial foreclosure initiated by petitioner UBP, nevertheless, remains invalid for being a blatant violation of the 4 May 2000 Order of the SEC Hearing Panel suspending all claims against respondent ASBDC. The 4 May 2000 Suspension Order of the SEC Hearing Panel, the validity of which is now unquestionable, likewise suspends the exercise by petitioner UBP of its right under Section 7.04 of the MTI. The 4 May 2000 Order suspended "all actions or **claims** against pending or still to be filed before any tribunal, office, board, body, and/or Commission against ASB Group of Companies."[29]

---

[28] *Id*. at 117.

[29] CA *rollo*, p. 108.

Section 1-1 of Rule I of the Rules of Procedure on Corporate Recovery states that the term **claim** "shall include all claims or debts of whatever character against a debtor or its property, whether secured or unsecured," and under which definition clearly falls the obligation of respondent ASBDC to petitioner UBP.

WHEREFORE, the Petition is *DENIED*. The Decision dated 31 May 2005 and Resolution dated 31 May 2006 of the Court of Appeals in CA-G.R. SP No. 85780 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174134. July 30, 2008]

FIRST PLANTERS PAWNSHOP, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; PAWNSHOPS; LATEST CLASSIFICATION UNDER THE LAW. — In fine, prior to the EVAT Law, pawnshops were treated as lending investors subject to lending investor's tax. Subsequently, with the Court's ruling in *Lhuillier*, pawnshops were then treated as VAT-able enterprises under the general classification of *"sale or exchange of services"* under Section 108(A) of the Tax Code of 1997, as amended. That pawnshops are to be treated as non-bank financial intermediaries is further bolstered by the fact that pawnshops are under the regulatory supervision of the *Bangko Sentral*

ng Pilipinas and covered by its Manual of Regulations for Non-Bank Financial Institutions. The Manual includes pawnshops in the list of non-bank financial intermediaries, *viz.*: § 4101Q.1 *Financial Intermediaries* x x x Non-bank financial intermediaries shall include the following: (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, **pawnshop**, money broker x x x. *Revenue Regulations No. 10-2004*, in fact, recognized these bases, to wit: SEC. 2. BASES OF QUALIFYING PAWNSHOPS AS NON-BANK FINANCIAL INTERMEDIARIES. — Whereas, in relation to Sec. 2.3 of Rev. Regs No. 9-2004 defining "Non-bank Financial Intermediaries, the term "pawnshop" as defined under Presidential Decree No. 114 which authorized its creation, *to be a person or entity engaged in the business of lending money*, all fall within the classification of Non-bank Financial Intermediaries and therefore, covered by Sec. 4 of R.A. No. 9238. This classification is equally supported by Subsection 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Intermediaries and reiterated in BSP Circular No. 204-99, classifying pawnshops as one of Non-bank Financial Intermediaries within the supervision of the Bangko Sentral ng Pilipinas. R.A. No. 9238 finally classified pawnshops as Other Non-bank Financial Intermediaries.

2. ID.; BANKS; FINANCIAL INTERMEDIARIES; DISTINCTION. — R.A. No. 337, as amended, or the General Banking Act characterizes the terms *banking institution* and *bank* as synonymous and interchangeable and specifically include commercial banks, savings bank, mortgage banks, development banks, rural banks, stock savings and loan associations, and branches and agencies in the Philippines of foreign banks. R.A. No. 8791 or the General Banking Law of 2000, meanwhile, provided that *banks* shall refer to entities engaged in the lending of funds obtained in the form of deposits. R.A. No. 8791 also included cooperative banks, Islamic banks and other banks as determined by the Monetary Board of the *Bangko Sentral ng Pilipinas* in the classification of banks. *Financial intermediaries*, on the other hand, are defined as "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with

them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."

3. TAXATION; INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAXES; PAWNSHOPS LIABLE THEREFOR. — Lastly, petitioner is liable for documentary stamp taxes. The Court has settled this issue in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, in which it was ruled that the subject of Documentary Stamp Tax (DST) is not limited to the document alone. Pledge, which is an exercise of a privilege to transfer obligations, rights or properties incident thereto, is also subject to DST, thus — x x x True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket. The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the NIRC, but there is no way that said provision may be interpreted in favor of petitioner. Section 195 **unqualifiedly subjects all pledges** to DST. It states that "[o]*n every x x x pledge x x x there shall be collected a documentary stamp tax x x x.*" It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

First Planters Pawnshop, Inc. (petitioner) contests the deficiency value-added and documentary stamp taxes imposed upon it by the Bureau of Internal Revenue (BIR) for the year 2000. The core of petitioner's argument is that it is not a lending investor within the purview of Section 108(A) of the National Internal Revenue Code (NIRC), as amended, and therefore not subject to value-added tax (VAT). Petitioner also contends that a pawn ticket is not subject to documentary stamp tax (DST) because it is not proof of the pledge transaction, and even assuming that it is so, still, it is not subject to tax since a documentary stamp tax is levied on the document issued and not on the transaction.

The facts:

In a Pre-Assessment Notice dated July 7, 2003, petitioner was informed by the BIR that it has an existing tax deficiency on its VAT and DST liabilities for the year 2000. The deficiency assessment was at ₱541,102.79 for VAT and ₱23,646.33 for DST.[1] Petitioner protested the assessment for lack of legal and factual bases.[2]

Petitioner subsequently received a Formal Assessment Notice on December 29, 2003, directing payment of VAT deficiency in the amount of ₱541,102.79 and DST deficiency in the amount of ₱24,747.13, inclusive of surcharge and interest.[3] Petitioner filed a protest,[4] which was denied by Acting Regional Director Anselmo G. Adriano per Final Decision on Disputed Assessment dated January 29, 2004.[5]

---

[1] *Rollo,* Annex "C", p. 84.

[2] *Id.,* Annex "D", pp. 85-90.

[3] *Id.,* Annex "E", pp. 91-95.

[4] *Id.,* Annex "F", pp. 96-107.

[5] *Id.,* Annex "G", p. 108.

Petitioner then filed a petition for review with the Court of Tax Appeals (CTA).[6] In a Decision dated May 9, 2005, the 2nd Division of the CTA upheld the deficiency assessment.[7] Petitioner filed a motion for reconsideration[8] which was denied in a Resolution dated October 7, 2005.[9]

Petitioner appealed to the CTA *En Banc* which rendered a Decision dated June 7, 2006, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit. The assailed Decision dated May 9, 2005 and Resolution dated October 7, 2005 are hereby AFFIRMED.
>
> SO ORDERED.[10]

Petitioner sought reconsideration but this was denied by the CTA *En Banc* per Resolution dated August 14, 2006.[11]

Hence, the present petition for review under Rule 45 of the Rules of Court based on the following grounds:

I

THE HONORABLE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN FINDING PETITIONER LIABLE FOR VAT.

II

THE HONORABLE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DST ON PAWN TICKETS.[12]

---

[6] *Id.*, Annex "H", pp. 109-122.

[7] *Id.*, Annex "I", pp. 150-168.

[8] *Id.*, Annex "J", pp. 169-183.

[9] *Id.*, Annex "K", pp. 184-188.

[10] *Id.* at 80.

[11] *Rollo*, pp. 82-83.

[12] *Id.* at 34.

The determination of petitioner's tax liability depends on the tax treatment of a pawnshop business. Oddly, there has not been any definitive declaration in this regard despite the fact that pawnshops have long been in existence. All that has been stated is what pawnshops are not, but not what pawnshops are.

The BIR itself has maintained an ambivalent stance on this issue. Initially, in *Revenue Memorandum Order No. 15-91* issued on March 11, 1991, a pawnshop business was considered as "akin to lending investor's business activity" and subject to 5% percentage tax beginning January 1, 1991, under Section 116 of the Tax Code of 1977, as amended by E.O. No. 273.[13]

With the passage of Republic Act (R.A.) No. 7716 or the EVAT Law in 1994,[14] the BIR abandoned its earlier position and maintained that pawnshops are subject to 10% VAT, as implemented by Revenue Regulations No. 7-95. This was complemented by *Revenue Memorandum Circular No. 45-01* dated October 12, 2001, which provided that pawnshop operators are liable to the 10% VAT based on gross receipts beginning January 1, 1996, while pawnshops whose gross annual receipts do not exceed ₱550,000.00 are liable for percentage tax, pursuant to Section 109(z) of the Tax Code of 1997.

CTA decisions affirmed the BIR's position that pawnshops are subject to VAT. In *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*,[15] the CTA ruled that the petitioner therein was subject to 10% VAT under Section 108 of the Tax Code of 1997. *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*[16] reiterates said ruling. It was the CTA's view that the services rendered by pawnshops

---

[13] As clarified by BIR Revenue Memorandum Circular No. 43-91 issued on May 27, 1991.

[14] Entitled, "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for these purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for Other Purposes."

[15] C.T.A. Case No. 6915, April 11, 2004.

[16] C.T.A. Case No. 7069, June 17, 2005.

fall under the general definition of "sale or exchange of services" under Section 108(A) of the Tax Code of 1997.

On July 15, 2003, the Court rendered *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[17] in which it was categorically ruled that while pawnshops are engaged in the business of lending money, they are not considered "lending investors" for the purpose of imposing percentage taxes.[18] The Court gave the following reasons: first, under the 1997 Tax Code, pawnshops and lending investors were subjected to different tax treatments; second, Congress never intended pawnshops to be treated in the same way as lending investors; third, Section 116 of the NIRC of 1977 subjects to percentage tax dealers in securities and lending investors only; and lastly, the BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC 43-91 that pawnshops were not subject to the 5% percentage tax on lending investors imposed by Section 116 of the NIRC of 1977, as amended by Executive Order No. 273.

In view of said ruling, the BIR issued *Revenue Memorandum Circular No. 36-2004* dated June 16, 2004, canceling the previous lending investor's tax assessments on pawnshops. Said Circular stated, *inter alia*:

> In view of the said Supreme Court decision, all assessments on pawnshops for percentage taxes as lending investors are hereby cancelled. This Circular is being issued for the sole purpose of resolving the tax liability of pawnshops to the 5% lending investors tax provided under the then Section 116 of the NIRC of 1977, as amended, and shall not cover issues relating to their other tax liabilities. All internal revenue officials are enjoined from issuing assessments on pawnshops for percentage taxes on lending investors, under the then Section 116 of the NIRC of 1977, as amended.

---

[17] G.R. No. 150947, July 15, 2003, 406 SCRA 178. Penned by Chief Justice Hilario G. Davide, Jr. with the concurrence of Associate Justices Jose Vitug, Consuelo Ynares-Santiago, Antonio T. Carpio and Adolfo S. Azcuna.

[18] *Id.* at 185.

For purposes of the gross receipt tax provided for under Republic Act No. 9294, the pawnshops are now subject thereof. This shall however, be covered by another issuance.[19]

Revenue Memorandum Circular No. 37-2004 was issued on the same date whereby pawnshop businesses were allowed to settle their VAT liabilities for the tax years 1996-2002 pursuant to a memorandum of agreement entered into by the Commissioner of Internal Revenue and the Chambers of Pawnbrokers of the Philippines, Inc. The Circular likewise instructed all revenue officers to ensure that "all VAT due from pawnshops beginning January 1, 2003, including increments thereto, if any, are assessed and collected from pawnshops under its jurisdiction."

In the interim, however, Congress passed Republic Act (R.A.) No. 9238 on February 5, 2004 entitled, "An Act Amending Certain Sections of the National Internal Revenue Code of 1997, as amended, by Excluding Several Services from the Coverage of the Value-added Tax and Re-imposing the Gross Receipts Tax on Banks and Non-bank Financial Intermediaries Performing Quasi-banking Functions and Other Non-bank Financial Intermediaries beginning January 01, 2004."[20]

Pending publication of R.A. No. 9238, the BIR issued Bank Bulletin No. 2004-01 on February 10, 2004 advising all banks and non-bank financial intermediaries that they shall remain liable under the VAT system.

When R.A. No. 9238 took effect on February 16, 2004, the Department of Finance issued *Revenue Regulations No. 10-2004* dated October 18, 2004, classifying pawnshops as Other Non-bank Financial Intermediaries. The BIR then issued *Revenue Memorandum Circular No. 73-2004* on November 25, 2004, prescribing the guidelines and policies on the assessment and collection of 10% VAT for gross annual sales/receipts exceeding

---

[19] ftp://ftp.bir.gov.ph/webadmin1/pdf/1887rmc36_04.pdf.

[20] Republic Act (R.A.) No. 9238 lapsed into law on February 05, 2004 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

₱550,000.00 or 3% percentage tax for gross annual sales/receipts not exceeding ₱550,000.00 of pawnshops prior to January 1, 2005.

In fine, prior to the EVAT Law, pawnshops were treated as lending investors subject to lending investor's tax. Subsequently, with the Court's ruling in *Lhuillier*, pawnshops were then treated as VAT-able enterprises under the general classification of "*sale or exchange of services*" under Section 108(A) of the Tax Code of 1997, as amended. R.A. No. 9238 finally classified pawnshops as Other Non-bank Financial Intermediaries.

The Court finds that pawnshops should have been treated as non-bank financial intermediaries from the very beginning, subject to the appropriate taxes provided by law, thus —

- Under the National Internal Revenue Code of 1977,[21] pawnshops should have been levied the 5% percentage tax on gross receipts imposed on bank and non-bank financial intermediaries under Section 119 (now Section 121 of the Tax Code of 1997);
- With the imposition of the VAT under R.A. No. 7716 or the EVAT Law,[22] pawnshops should have been subjected to the 10% VAT imposed on banks and non-bank financial intermediaries and financial institutions under Section 102 of the Tax Code of 1977 (now Section 108 of the Tax Code of 1997);[23]
- This was restated by R.A. No. 8241,[24] which amended R.A. No. 7716, although the levy, collection and assessment of the 10% VAT on services rendered by banks, non-bank financial intermediaries, finance companies, and other

---

[21] Presidential Decree No. 1158.

[22] Effective May 28, 1994.

[23] The implementation of the VAT system under R.A. No. 7716 was made effective January 1, 1996 (see *Commissioner of Internal Revenue v. Philippine Global Communications, Inc.*, G.R. No. 144696, August 16, 2006, 499 SCRA 53).

[24] Approved on December 20, 1996.

financial intermediaries not performing quasi-banking functions, were made effective January 1, 1998;[25]

- R.A. No. 8424 or the Tax Reform Act of 1997[26] likewise imposed a 10% VAT under Section 108 but the levy, collection and assessment thereof were again deferred until December 31, 1999;[27]
- The levy, collection and assessment of the 10% VAT was further deferred by R.A. No. 8761 until December 31, 2000, and by R.A. No. 9010, until December 31, 2002;
- With no further deferments given by law, the levy, collection and assessment of the 10% VAT on banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions were finally made effective beginning January 1, 2003;
- Finally, with the enactment of R.A. No. 9238, the services of banks, non-bank financial intermediaries, finance companies,

---

[25] R.A. No. 8241, Section 11 provides:

SEC. 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows:

"SEC. 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services*. — The value-added tax shall be levied, assessed and collected on the following transactions, starting January 1, 1998:

x x x x x x x x x

(b) Services rendered by banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions;

x x x x x x x x x:"

[26] R.A. No. 8424 renamed the National Internal Revenue Code of 1977 to National Internal Revenue Code of 1997, or the Tax Code of 1997, and took effect on January 1, 1998.

[27] R.A. No. 8428, Section 5 provides:

SEC. 5. *Transitory Provisions.* — Deferment of the Effectivity of the Imposition of VAT on Certain Services. — The effectivity of the imposition of the value-added tax on services as prescribed in Section 17(a) and (b) of Republic Act No. 7616, as amended by Republic Act. 8241, is hereby further deferred until December 31, 1999, unless Congress deems otherwise: *Provided*, That the said services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended.

and other financial intermediaries not performing quasi-banking functions were specifically exempted from VAT,[28] and the 0% to 5% percentage tax on gross receipts on other non-bank financial intermediaries was reimposed under Section 122 of the Tax Code of 1997.[29]

---

[28] R.A. No. 9238, Section 2 provides:

SEC. 2. Section 109 of the same Code is hereby amended by rewording paragraph (1) and inserting additional paragraphs after (z) which shall now read as follows:

"SEC. 109. *Exempt Transactions.* — The following shall be exempt from the value-added tax:

x x x x x x x x x

(aa) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries;

x x x x x x x x x

The foregoing exemptions to the contrary notwithstanding, any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issue a VAT invoice or receipt therefor shall, in additional to his liability to other applicable percentage tax, if any, be liable to the tax imposed in Section 106 or 108 without the benefit of input tax credit, and such tax shall also be recognized as input tax credit to the purchaser under Section 110, all of this Code."

[29] R.A. No. 9238, Section 4 reads:

Section 4. Section 122 of the National Internal Revenue Code of 1997, as amended, is hereby restored with amendments to read as follows:

"Sec. 122. *Tax on Other Non-Bank Financial Intermediaries*. — There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from interest, commissions, discounts and all other items treated as gross income under this code: *Provided*, that interests, commissions and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:

maturity period is five (5) years or less..... 5%
maturity period is more than five (5) years..... 1%

Provided, however, that in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.

Provided, finally, that the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank

At the time of the disputed assessment, that is, for the year 2000, pawnshops were not subject to 10% VAT under the general provision on "sale or exchange of services" as defined under Section 108(A) of the Tax Code of 1997, which states: "'*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration x x x." Instead, due to the specific nature of its business, pawnshops were then subject to 10% VAT under the category of non-bank financial intermediaries, as provided in the same Section 108(A), which reads:

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase "*sale or exchange of services*" means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including x x x **services of banks, non-bank financial intermediaries and finance companies**; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include: x x x (Emphasis and underscoring supplied)

The tax treatment of pawnshops as non-bank financial intermediaries is not without basis.

R.A. No. 337, as amended, or the General Banking Act characterizes the terms *banking institution* and *bank* as synonymous and interchangeable and specifically include commercial banks, savings bank, mortgage banks, development banks, rural banks,

---

financial intermediaries shall likewise be the basis for the calculation of gross receipts.

Nothing in this code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities."

stock savings and loan associations, and branches and agencies in the Philippines of foreign banks.[30] R.A. No. 8791 or the General Banking Law of 2000, meanwhile, provided that *banks* shall refer to entities engaged in the lending of funds obtained in the form of deposits.[31] R.A. No. 8791 also included cooperative banks, Islamic banks and other banks as determined by the Monetary Board of the *Bangko Sentral ng Pilipinas* in the classification of banks.[32]

Financial intermediaries, on the other hand, are defined as "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."[33]

It need not be elaborated that pawnshops are non-banks/ banking institutions. Moreover, the nature of their business activities partakes that of a financial intermediary in that its principal function is lending.

A pawnshop's business and operations are governed by Presidential Decree (P.D.) No. 114 or the Pawnshop Regulation Act and Central Bank Circular No. 374 (Rules and Regulations for Pawnshops). Section 3 of P.D. No. 114 defines *pawnshop* as "a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawn brokerage."

That pawnshops are to be treated as non-bank financial intermediaries is further bolstered by the fact that pawnshops are under the regulatory supervision of the *Bangko Sentral ng Pilipinas* and covered by its Manual of Regulations for Non-

---

[30] Section 2.

[31] Section 3.1.

[32] Section 3.1 (e), (f), and (g).

[33] General Banking Act, Section 2-D(c); Manual of Regulations for Non-Bank Financial Institutions, § 4101Q.1.

Bank Financial Institutions. The Manual includes pawnshops in the list of non-bank financial intermediaries, *viz.*:

> § 4101Q.1 *Financial Intermediaries*
>
> x x x x x x x x x
>
> Non-bank financial intermediaries shall include the following:
>
> (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, **pawnshop**, money broker x x x. (Emphasis supplied)

Revenue Regulations No. 10-2004, in fact, recognized these bases, to wit:

> SEC. 2. BASES OF QUALIFYING PAWNSHOPS AS NON-BANK FINANCIAL INTERMEDIARIES. —Whereas, in relation to Sec. 2.3 of Rev. Regs No. 9-2004 defining "Non-bank Financial Intermediaries, the term "pawnshop" as defined under Presidential Decree No. 114 which authorized its creation, *to be a person or entity engaged in the business of lending money*, all fall within the classification of Non-bank Financial Intermediaries and therefore, covered by Sec. 4 of R.A. No. 9238.
>
> This classification is equally supported by Subsection 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Intermediaries and reiterated in BSP Circular No. 204-99, classifying pawnshops as one of Non-bank Financial Intermediaries within the supervision of the Bangko Sentral ng Pilipinas.

Ultimately, R.A. No. 9238 categorically confirmed the classification of pawnshops as non-bank financial intermediaries.

Coming now to the issue at hand — Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; **however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law**,[34] **then petitioner is not liable for VAT during these tax years**. But with the full

[34] See pages 7-8 of this Decision.

implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5 %, as the case may be.

Lastly, petitioner is liable for documentary stamp taxes.

The Court has settled this issue in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*,[35] in which it was ruled that the subject of DST is not limited to the document alone. Pledge, which is an exercise of a privilege to transfer obligations, rights or properties incident thereto, is also subject to DST, thus —

> x x x the subject of a DST is not limited to the document embodying the enumerated transactions. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. In *Philippine Home Assurance Corporation v. Court of Appeals*, it was held that:
>
> x x x x x x x x x
>
> Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. This is essentially the business of pawnshops which are defined under Section 3 of Presidential Decree No. 114, or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.
>
> Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every such loan or pledge, a memorandum or ticket signed by the pawnbroker and containing the following details: (1) name

[35] G.R. No. 166786, May 3, 2006, 489 SCRA 147.

and residence of the pawner; (2) date the loan is granted; (3) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.

Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

x x x x x x x x x

True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the NIRC, but there is no way that said provision may be interpreted in favor of petitioner. Section 195 **unqualifiedly subjects all pledges** to DST. It states that "[o]*n every x x x pledge x x x there shall be collected a documentary stamp tax x x x.*" It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

x x x x x x x x x

In the instant case, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199 of the NIRC enumerated certain documents which are not subject to stamp tax; but a pawnshop ticket is not one of them. Hence, petitioner's nebulous claim that it is not subject to DST is without merit. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore,

not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.

Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[36]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision dated June 7, 2006 and Resolution dated August 14, 2006 of the Court of Tax Appeals *En Banc* is *MODIFIED* to the effect that the Bureau of Internal Revenue assessment for VAT deficiency in the amount of ₱541,102.79 for the year 2000 is *REVERSED and SET ASIDE,* while its assessment for DST deficiency in the amount of ₱24,747.13, inclusive of surcharge and interest, is *UPHELD*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176995. July 30, 2008]

PABLO D. ACAYLAR, JR., *petitioner, vs.* **DANILO G. HARAYO,** *respondent.*

---

[36] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, May 2, 2006, 488 SCRA 538, 545.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM RTC, AS APPELLATE COURT, TO CA; WHERE A RIGID APPLICATION OF THE RULES WILL RESULT IN A MANIFEST FAILURE OR MISCARRIAGE OF JUSTICE, TECHNICALITIES SHOULD BE DISREGARDED IN ORDER TO RESOLVE THE CASE; CASE AT BAR. — In appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary on the part of the appellate court. Section 5, Rule 141 of the Revised Rules of Court provides that "If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceedings." Petitioner explained in his Motion for Reconsideration before the Court of Appeals that he relied in good faith on the computation provided by the Clerk of Court of Zamboanga with whom he inquired as regards the amount of docket fees due. He had previously paid ₱4,030.00 and was short of only ₱500.00, which he also immediately paid upon being informed of the deficiency. Given the circumstances, petitioner should have been granted leniency by the Court of Appeals on this matter. We also agree with the petitioner that failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly alleged in his Petition. In the recent case of *Great Southern Maritime Services Corporation v. Acuña*, we held that "the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records." The more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration. The other material dates may be gleaned from the records of the case if reasonably evident. Likewise excusable is petitioner's failure to strictly follow the required form for presenting the facts and law of his case before the Court of Appeals. His Petition before the appellate court consists of only five pages, presenting concisely enough the facts and law supporting his case. With respect to petitioner's failure to furnish the RTC a copy of his Petition with the Court of Appeals, this Court found upon examination of the records

that petitioner had already complied with such requirement. Accordingly, the parties are now given the amplest opportunity to fully ventilate their claims and defenses brushing aside technicalities in order to truly ascertain the merits of this case. Indeed, judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities. Where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; DISTINGUISHED. — The distinctions between the two forms of ejectment suits, are: first, in forcible entry, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant, whereas, in unlawful detainer, the plaintiff need not have been in prior physical possession; second, in forcible entry, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by force, intimidation, threat, strategy or stealth, while in unlawful detainer, the possession of the defendant is inceptively lawful but it becomes illegal by reason of the termination of his right to the possession of the property under his contract with the plaintiff; third, in forcible entry, the law does not require a previous demand for the defendant to vacate the premises, but in unlawful detainer, the plaintiff must first make such demand, which is jurisdictional in nature.

3. ID.; ID.; FORCIBLE ENTRY; FACT OF PRIOR PHYSICAL POSSESSION IS AN INDISPENSABLE ELEMENT. — In a long line of cases, this Court reiterated that the fact of prior physical possession is an indispensable element in forcible entry cases. The plaintiff must prove that he was in prior physical possession of the premises long before he was deprived thereof by the defendant. It must be stressed that plaintiff cannot succeed where it appears that, as between himself and the defendant, the latter had possession antedating his own. To ascertain this, it is proper to look at the situation as it existed long before the first act of spoliation occurred in order to intelligibly determine whose position is more in accord with the surrounding circumstances of the case and the applicable legal principles.

4. ID.; CIVIL PROCEDURE; APPEALS; SUPREME COURT MAY INTERVENE TO SETTLE FACTUAL ISSUES

RAISED BY THE PARTIES WHERE FACTUAL FINDINGS OF COURTS *A QUO* ARE CONTRARY TO EACH OTHER. — Such determination in this case requires a review of factual evidence, generally proscribed in a petition like this. However, where the factual findings of the courts *a quo* are contrary to each other, this Court may intervene to resolve the conflict and settle the factual issues raised by the parties.

5. ID.; ID.; SPECIAL CIVIL ACTIONS; BASIC DOCTRINE IN RESOLVING EJECTMENT CASES—ONLY QUESTION COURTS MUST RESOLVE IS WHO IS ENTITLED TO PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY. — Both the MTCC and the RTC decided in favor of petitioner since they considered him to have been vested with possession of the subject property by virtue of the execution of the Deed of Sale on 14 September 2004. However, such a ruling violates one of the most basic doctrines in resolving ejectment cases. We had long settled that the only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical or material possession of the property, that is, possession *de facto*; and they should not involve the question of ownership or of possession *de jure*, which is to be settled in the proper court and in a proper action. As we elucidated in the recent case of *Sudaria v. Quiambao:* Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

6. ID.; ID.; ID.; ID.; THERE IS NO SHOWING THAT EITHER ZOILA ACAYLAR (MOTHER OF PETITIONER) OR RESPONDENT HARAYO MADE AN EXPRESS DEMAND UPON PETITIONER TO VACATE THE SUBJECT PROPERTY. — The conflicting Affidavits of Zoila Acaylar, notwithstanding, we find that petitioner was in peaceful

possession of the subject property prior to its sale to respondent. Even if petitioner was not authorized by Zoila Acaylar to possess the subject property as administrator, his possession was not opposed and was, thus, tolerated by his parents. As we ruled in *Arcal v. Court of Appeals:* **The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.** A person who occupies the 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 against him. The status of the possessor is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. In the instant case, there is no showing that either Zoila Acaylar or respondent made an express demand upon petitioner to vacate the subject property. In the absence of an oral or written demand, petitioner's possession of the subject property has yet to become unlawful. The absence of demand to vacate precludes us from treating this case, originally instituted as one for forcible entry, as one of unlawful detainer, since demand to vacate is jurisdictional in an action for unlawful detainer. In conclusion, since petitioner was in prior physical possession of the subject property, respondent has no cause of action against petitioner for forcible entry. Neither can we treat respondent's case against petitioner as one for unlawful detainer absent the jurisdictional requirement of demand to vacate made upon petitioner.

APPEARANCES OF COUNSEL

Elumbaring & Mandantes Law Office for petitioner.
Cres N. Palpagan for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Pablo D. Acaylar, Jr., seeking the reversal and the setting aside of the Resolutions[2] dated 28 July 2006 and 30 January 2007 of the Court of Appeals in CA-G.R. SP No. 01077-MIN. The appellate court, in its assailed Resolution dated 28 July 2006, dismissed petitioner's Petition for Review on *Certiorari* therein on technical grounds; thus, it affirmed the Decision dated 20 January 2006 of the Regional Trial Court (RTC) of Dipolog City, Branch 9, in Civil Case No. 6087, which, in turn, affirmed the Decision[3] dated 28 March 2005 of the Municipal Trial Court in Cities (MTCC) of Dapitan City, in Civil Case No. 622, awarding possession of the subject property to respondent Danilo G. Harayo on the ground that he is the lawful possessor thereof. In its assailed Resolution dated 30 January 2007, the Court of Appeals refused to reconsider its earlier Resolution of 28 July 2006.

The subject property is a parcel of land designated as Lot 741-B-1 situated in Tolon, Potungan, Dapitan City, with an area of 30,000 square meters, described and bounded as follows:

> Lot 741-B-1 of the Sketch Plan, situated at Tolon, Potungan, Dapitan City, containing an area of 30,000 square meters, bounded on the N., by Tolon River; on the South by Lot 741-A; on the E by Lot 741-B-2; and on the West by the Municipal Road, and embraced in OCT No. – (P-14969)-1119.[4]

In his Complaint filed with the MTCC, and docketed as Civil Case No. 622, respondent alleged that he acquired the subject

---

[1] *Rollo,* pp. 1-25.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco-Flores and Sixto Marella, Jr., concurring. *Rollo,* pp. 24-26 and 38-42.

[3] *Rollo,* pp. 44-49.

[4] *Id.* at 44.

property from the spouses Pablo Acaylar, Sr., and Zoila Dangcalan Acaylar (the spouses Acaylar) by virtue of a Deed of Sale executed on 14 September 2004. On the same day, respondent took possession of the subject property. On 19 September 2004, one of the spouses Acaylar's sons, the petitioner, using strategy, intimidation, threats and stealth, entered the subject property, cut the tall grasses in the coconut plantation therein, gathered the fallen coconuts and other fruits, and pastured his cows and other animals thereon.[5]

In his Answer, petitioner countered that the subject property claimed by respondent is a portion of the entire property owned by petitioner's parents, the spouses Acaylar, with a total area of 59,775 square meters. Petitioner is in possession of his parents' entire property since 1979 as administrator thereof. He built his house on the property and farmed the land. Respondent cannot definitively claim which portion of the entire property he was able to buy from the spouses Acaylar since the same was not clearly delineated.[6] In addition, petitioner, together with his sisters, Rosario Acaylar Herrera and Asteria Acaylar, already filed against respondent and his spouse Beatriz Harayo a case for annulment of the Deed of Sale dated 14 September 2004, with prayer for preliminary injunction and damages, presently pending before the RTC, Branch 6.

During the Pre-Trial Conference held before the MTCC on 17 February 2005, the parties stipulated that the spouses Acaylar sold to respondent only a 30,000-square-meter portion of their entire property; and that there is a pending civil case before the RTC on the validity of the sale of the subject property.

Among the pieces of evidence presented by respondent before the MTCC was an Affidavit of Zoila Acaylar (First Affidavit) attesting that she sold the subject property to respondent for consideration and she did not give petitioner authority to either administer or remain on her and her husband's property.

---

[5] *Id*. at 44-46.

[6] *Id*.

After trial, the MTCC rendered a Decision[7] on 28 March 2005, awarding to respondent the possession of the subject property. The MTCC gave credence to respondent's claim that he took immediate possession of the subject property after the execution of the Deed of Sale but was ousted therefrom by petitioner who invoked the alleged authority granted to him by Zoila Acaylar as the administrator of the unsold portion of her and her husband's property. The MTCC referred to the First Affidavit executed by Zoila Acaylar wherein she refuted that she gave petitioner authority or designated him as the administrator of her and her husband's property. Zoila Acaylar further admitted therein that the subject property was already sold to respondent. For lack of any legal right to remain on the subject property, the MTCC adjudged that petitioner's possession of the same was illegal. The dispositive portion of the MTCC Decision reads:

> WHEREFORE, judgment is hereby rendered, by preponderance of evidence in favor of the [herein respondent] as against the [herein petitioner], and hereby orders:
>
> (1) For [petitioner] and all other persons who may have derived rights from him to vacate lot 741-B-1 containing an area of 30,000 square meters as shown in the sketch plan prepared by Christopher Palpagan and turn over peaceful possession thereof to [herein respondent];
>
> (2) For [petitioner] to pay [respondent] the amount of ₱5,000.00 as attorney's fees and ₱ 1,591.25 as costs of the suit.
>
> All other claims and counterclaims are hereby dismissed for lack of merit.[8]

On appeal, docketed as Civil Case No. 6087, the RTC promulgated its Decision[9] dated 20 January 2006 affirming the award of possession in favor of respondent after finding that the appealed MTCC Decision was based on facts and law on the matter. The RTC declared that the sale of the subject property

---

[7] *Id*. at 44-49.

[8] *Id*. at 49.

[9] *Id*. at 50-54.

by the spouses Acaylar to respondent vested ownership and possession of said property in the latter. Thus, petitioner's acts of entering the subject property, cutting the tall grasses and gathering the agricultural products therein, constitute forcible entry, which gave rise to an action for ejectment. The RTC decreed:

> WHEREFORE, premises considered, [the RTC] finds by preponderance of evidence that [herein respondent] is in physical possession of the [subject property] that is on September 14, 2004 prior to the [herein petitioner] on September 19, 2004 and therefore affirms the decision of the Municipal Trial Court in the City of Dapitan without modification.[10]

Banking on another Affidavit (Second Affidavit) executed by Zoila Acaylar, in which she recanted the statements she made in her First Affidavit denying that she designated petitioner as the administrator of her and her husband's property, petitioner moved for the reconsideration of the 20 January 2006 Decision of the RTC. The RTC, however, issued a Resolution[11] dated 18 April 2006 denying petitioner's Motion for Reconsideration.

Consequently, petitioner filed a Petition for Review on *Certiorari*[12] with the Court of Appeals where it was docketed as CA-G.R. SP No. 01077-MIN. Petitioner argued in his Petition that the RTC gravely erred in ruling that respondent was in prior possession of the subject property based solely on the Deed of Sale executed by the spouses Acaylar in respondent's favor. Petitioner also asserted therein that the RTC gravely abused its discretion when it did not give credence to the Second Affidavit executed by Zoila Acaylar.[13]

On 28 July 2006, the Court of Appeals issued a Resolution[14] dismissing outright CA-G.R. SP No. 01077-MIN for failure of

---

[10] *Id.* at 53.

[11] *Id.* at 54-57.

[12] CA *rollo,* pp. 7-13.

[13] *Id*.

[14] *Rollo,* pp. 24-26.

petitioner to avail himself of the correct remedy under the law. Petitioner should have filed a **Petition for Review** under Rule 42 of the Revised Rules of Court, the proper remedy to appeal the adverse decisions rendered by the RTC in its appellate capacity. Instead, petitioner erroneously filed a **Petition for Review on *Certiorari***[15] to assail the 20 January 2006 Decision and 8 April 2006 Resolution of the RTC in Civil Case No. 6087. The Court of Appeals also noted non-compliance by petitioner and his counsel with several more requirements for filing a petition with the Court of Appeals, namely: (a) shortage in the payment of the docket fees; (b) failure of petitioner's counsel to indicate the place of issue of his Integrated Bar of the Philippines (IBP) number and his complete address; (3) failure of petitioner to furnish the appellate court which rendered the assailed decision, in this case the RTC, a copy of the Petition; and (4) failure of the Petition to state the material dates.

The Court of Appeals, in a Resolution[16] dated 30 January 2007, denied for lack of merit the Motion for Reconsideration interposed by petitioner. The appellate court, however, excused the mistake of petitioner in the designation of the pleading as a Petition for Review on *Certiorari*, since it was clear from petitioner's Motion for Extension to file Petition for Review that he wished to avail himself of the remedy provided under Rule 42 of the Revised Rules of Court.

Petitioner is now before this Court *via* the Petition at bar, making the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE PETITION DESPITE ADEQUATE EXPLANATION SUBMITTED BY THE PETITIONER ON THE TECHNICALITIES ASSIGNED TO THE PETITIONER;

---

[15] A Petition for Review on *Certiorari* is a mode of appeal in which only questions of law are raised before the Supreme Court.

[16] *Rollo*, pp. 38-43.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN READING SHORT THE GIST OF THE PETITION WHEN IT RULED THAT SPECIFIC MATTERS INVOLVED IN THE CASE WERE INDICATED IN THE PETITION;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT ANNEXES WERE NOT ATTACHED WHEN THEY ARE DULY ATTACHED;

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO EVALUATE THE PROPRIETY (SIC) FORCIBLE ENTRY CASE WHICH IS THE ORIGINAL ACTION INVOLVED IN THIS CASE *VIS-À-VIS* UNLAWFUL DETAINER.[17]

The Court first addresses the procedural issues involved in the present case.

The Court of Appeals pointed several procedural defects of petitioner's Petition for Review therein. Petitioner's payment of docket fees was short of ₱500.00. It is also evident after a perusal of the records that petitioner failed to indicate in his Petition with the Court of Appeals the material dates to establish when he received notice of the assailed RTC Decision and when he filed his motion for reconsideration thereof with the RTC, as required by Section 2, Rule 42[18] of the Revised Rules of

---

[17] *Id.* at 6-7.

[18] SEC. 2. *Form and contents*. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court,

Court. Petitioner further failed to set forth concisely a statement of the matters involved in the case in accordance with the same provision. Finally, petitioner did not furnish the RTC, the court which rendered the assailed decision, a copy of the Petition he filed with the Court of Appeals.[19]

Petitioner, however, submits that he raised meritorious arguments in his Petition with the Court of Appeals and, thus, the dismissal thereof on a mere technicality would cause a miscarriage of justice. The petitioner invokes considerations of substantial justice and prays that this Court give his Petition due course and set aside the Court of Appeals Resolutions dated 28 July 2006 and 30 January 2007 in CA-G.R. SP No. 01077-MIN.

Respondent counters that the Court of Appeals did not commit any reversible error in dismissing the Petition in CA-G.R. SP No. 01077-MIN and adopted the discussion of the appellate court in his Memorandum.

In appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary on the part of the appellate court.[20] Section 5, Rule 141 of the Revised Rules of Court provides that "If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceedings." Petitioner explained in his Motion for Reconsideration before the Court of Appeals that he relied in good faith on the computation provided by the Clerk of Court of Zamboanga with whom he inquired as regards the amount of docket fees due. He had previously paid ₱4,030.00 and was short of only ₱500.00, which he also immediately paid upon being informed of the deficiency. Given the circumstances, petitioner should have been granted leniency by the Court of Appeals on this matter.

---

the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

[19] *Rollo,* pp. 24-26.

[20] *NAWASA v. Sec. of Pub. Works and Communications,* 123 Phil. 346, 349 (1966).

We also agree with the petitioner that failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly alleged in his Petition.[21] In the recent case of *Great Southern Maritime Services Corporation v. Acuña*,[22] we held that "the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records." The more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration.[23] The other material dates may be gleaned from the records of the case if reasonably evident.[24]

Likewise excusable is petitioner's failure to strictly follow the required form for presenting the facts and law of his case before the Court of Appeals. His Petition before the appellate court consists of only five pages, presenting concisely enough the facts and law supporting his case.

With respect to petitioner's failure to furnish the RTC a copy of his Petition with the Court of Appeals, this Court found upon examination of the records that petitioner had already complied with such requirement.[25]

Accordingly, the parties are now given the amplest opportunity to fully ventilate their claims and defenses brushing aside technicalities in order to truly ascertain the merits of this case. Indeed, judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities.[26] Where

---

[21] *Rollo,* p. 8.

[22] G.R. No. 140189, 28 February 2005, 452 SCRA 422, 433.

[23] *Security Bank Corporation v. Aerospace University*, G.R. No. 146197, 27 June 2005, 461 SCRA 260, 270.

[24] *Id*.

[25] *Rollo,* pp. 44-53.

[26] *Fulgencio v. National Labor Relations Commission*, 457 Phil. 868, 880-881 (2003).

a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case. In *Aguam v. Court of Appeals*,[27] we ruled that:

> The court has [the] discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Law suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

In this case, the Court finds that petitioner's procedural lapses are forgivable and opts to dispose the instant Petition on its merits rather than remand the case to the appellate court, a remand not being necessary where, as in the instant case, the ends of justice would not be served thereby and we are already in a position to resolve the dispute based on the records before us.

We now proceed to discuss the merits of the case.

---

[27] 388 Phil. 587, 593-594 (2000).

Relevant in the case at bar is Section 1, Rule 70 of the Revised Rules of Court which provides:

> 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.

Under the above provision, there are two entirely distinct and different causes of action, to wit: (1) a case for forcible entry, which is an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy or stealth; and (2) a case for unlawful detainer, which is an action for recovery of possession from defendant whose possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of his right thereunder.[28]

The distinctions between the two forms of ejectment suits, are: first, in forcible entry, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant, whereas, in unlawful detainer, the plaintiff need not have been in prior physical possession; second, in forcible entry, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by force, intimidation, threat, strategy or stealth, while in unlawful detainer, the possession of the defendant is inceptively lawful

---

[28] *Santos v. Ayon*, G.R. No. 137013, 6 May 2006, 458 SCRA 83, 90.

but it becomes illegal by reason of the termination of his right to the possession of the property under his contract with the plaintiff; third, in forcible entry, the law does not require a previous demand for the defendant to vacate the premises, but in unlawful detainer, the plaintiff must first make such demand, which is jurisdictional in nature.[29]

The above distinctions, more importantly the nature of defendant's entry into the property, are material to the present case in order to ascertain the propriety of respondent's action for forcible entry filed before the MTCC. It bears to stress that it is the nature of defendant's entry into the land which determines the cause of action, whether it is forcible entry or unlawful detainer. If the entry is illegal, then the action which may be filed against the intruder is forcible entry. If, however, the entry is legal but the possession thereafter becomes illegal, the case is unlawful detainer.[30]

In the case at bar, respondent filed an action for forcible entry before the MTCC. Respondent alleged that he took possession of the subject property immediately after the spouses Acaylar executed a Deed of Sale thereof in his favor on 14 September 2004, but was forcibly deprived thereof by petitioner. A case for forcible entry, therefore, is proper since petitioner's entry into the subject property is already illegal at its incipience.

Petitioner, on the other hand, harps on the fact that he was in possession of the subject property since 1979, having built his house thereon and farmed the land, and it was impossible for him to wrest possession of the subject property from respondent, for he was already occupying the same way before its alleged sale to respondent. Petitioner, thus, maintains that his possession over the subject property is lawful from the start, as he was authorized by Zoila Acaylar to administer the same, making respondent's suit for forcible entry before the MTCC the wrong remedy.

---

[29] *Cajayon v. Batuyong*, G.R. No. 149118, 16 February 2006, 482 SCRA 461, 470-471.

[30] *Spouses Valdez, Jr. v. Court of Appeals*, G.R. No. 132424, 4 May 2006, 489 SCRA 369, 378.

In a long line of cases,[31] this Court reiterated that the fact of prior physical possession is an indispensable element in forcible entry cases. The plaintiff must prove that he was in prior physical possession of the premises long before he was deprived thereof by the defendant.[32] It must be stressed that plaintiff cannot succeed where it appears that, as between himself and the defendant, the latter had possession antedating his own. To ascertain this, it is proper to look at the situation as it existed long before the first act of spoliation occurred in order to intelligibly determine whose position is more in accord with the surrounding circumstances of the case and the applicable legal principles. Such determination in this case requires a review of factual evidence, generally proscribed in a petition like this. However, where the factual findings of the courts *a quo* are contrary to each other, this Court may intervene to resolve the conflict and settle the factual issues raised by the parties.[33]

In the instant Petition, the MTCC cited Zoila Acaylar's First Affidavit in which she attested that she did not appoint or designate petitioner as administrator of her and her husband's property, and that she gathered the coconuts and harvested other crops from the property by employing farm workers. Since petitioner was never in possession of the subject property, then the MTCC concluded that respondent had taken possession of the same from the spouses Acaylar right after its purchase. The RTC, on the other hand, expressly recognized that petitioner possessed the subject property, but his possession was merely tolerated by his parents, and that respondent, as purchaser of the subject property from the parents, the spouses Acaylar, had better right to the possession of the same. Thus, as to whether petitioner had actual or physical possession of the subject property prior to respondent is a factual issue which we are called upon to

---

[31] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, 31 March 2005, 454 SCRA 653; *Sps. Gaza v. Lim*, 443 Phil. 337 (2003).

[32] *Sps. Gaza v. Lim, id.* at 348-349.

[33] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 906 (2002).

resolve, considering that the courts below had contradicting findings.

After careful and thorough recalibration and re-examination of the evidence available on record, we find that petitioner had physical possession of the subject property prior to and at the time of its sale by the spouses Acaylar to respondent. It is actually irrelevant whether petitioner possessed the subject property as the administrator thereof. As the son of the spouses Acaylar, he could very well enter into possession of the subject property either with the express permission or at the tolerance of his parents who owned the property. Petitioner alleged, and respondent did not dispute, that petitioner had entered into possession of his parents' property as early as 1979, and he even built his house thereon. Although Zoila Acaylar may have attested in her First Affidavit that she did not appoint or designate petitioner as the administrator of her and her husband's property, **she never claimed that petitioner unlawfully or illegally entered her property when he built his house thereon**.

We are not persuaded by respondent's assertion that after he took possession of the subject property from the Zoila spouses, petitioner entered the subject property on a whim, for not only does such postulation lack clear, positive, and convincing evidentiary support, but also because it is illogical and contrary to common human experience. A person would not, for a reason so shallow as a whim, encroach upon another's property and gather fruits and other agricultural products therefrom, thereby risking criminal prosecution and civil liabilities. The more plausible and logical scenario would be that petitioner was already occupying the subject property prior to the sale. Petitioner, in gathering the coconut fruits and other crops, cutting grasses, and domesticating animals on the subject property, even after its sale to respondent on 14 September 2004, was only continuing to exercise acts of possession over the subject property as he had done in years before.

Moreover, we note that the subject property was sold to respondent and he supposedly took possession thereof on 14 September 2004; and that petitioner allegedly forced his way

into the property on 19 September 2004. This would mean that respondent, after taking over possession of the subject property from petitioner's parents, possessed the subject property for only five days before being deprived thereof by the petitioner. The very short period when respondent purportedly possessed the subject property renders said possession suspect. It is not clear to us how petitioner took actual possession of the subject property on 14 September 2004. Neither are we enlightened on the manner in which respondent exercised or demonstrated his physical or material possession over the subject property for the five days before he was reputedly ousted therefrom by petitioner.

Both the MTCC and the RTC decided in favor of petitioner since they considered him to have been vested with possession of the subject property by virtue of the execution of the Deed of Sale on 14 September 2004. However, such a ruling violates one of the most basic doctrines in resolving ejectment cases. We had long settled that the only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical or material possession of the property, that is, possession *de facto*; and they should not involve the question of ownership or of possession *de jure*, which is to be settled in the proper court and in a proper action.[34] As we elucidated in the recent case of *Sudaria v. Quiambao*[35]:

> Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.
>
> Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property

---

[34] *Manuel v. Court of Appeals*, G.R. No. 95469, 25 July 1991, 199 SCRA 603, 608.

[35] G.R. No. 164305, 20 November 2002, 537 SCRA 689, 697-698.

until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

Hence, the Deed of Sale conferring ownership of the subject property upon respondent is clearly irrelevant in the case presently before us. The Deed of Sale did not automatically place respondent in physical possession of the subject property. It is thus incumbent upon respondent to establish by evidence that he took physical possession of the subject property from the spouses Acaylar on 14 September 2004 and he was in actual possession of the said property when petitioner forcibly entered the same five days later.

The conflicting Affidavits of Zoila Acaylar, notwithstanding, we find that petitioner was in peaceful possession of the subject property prior to its sale to respondent. Even if petitioner was not authorized by Zoila Acaylar to possess the subject property as administrator, his possession was not opposed and was, thus, tolerated by his parents. As we ruled in *Arcal v. Court of Appeals*[36]:

The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by torelance refuses to comply with such demand. A person who occupies the 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 against him. The status of the possessor is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate.

In the instant case, there is no showing that either Zoila Acaylar or respondent made an express demand upon petitioner to vacate the subject property. In the absence of an oral or written demand, petitioner's possession of the subject property has yet to become unlawful. The absence of demand to vacate precludes us from

---

[36] G.R. No. 127850, 26 January 1998, 285 SCRA 34, 43.

treating this case, originally instituted as one for forcible entry, as one of unlawful detainer, since demand to vacate is jurisdictional in an action for unlawful detainer.[37]

In conclusion, since petitioner was in prior physical possession of the subject property, respondent has no cause of action against petitioner for forcible entry. Neither can we treat respondent's case against petitioner as one for unlawful detainer absent the jurisdictional requirement of demand to vacate made upon petitioner. However, our dismissal of respondent's Complaint herein against petitioner is without prejudice to respondent's filing of the appropriate remedy under the law to acquire possession of the subject property, as well as to the resolution of the civil case pending with the RTC, Branch 6, for the annulment of the Deed of Sale dated 14 September 2004.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 28 July 2006 of the Court of Appeals and its Resolution dated 30 January 2007 in CA-G.R. SP No. 01077-MIN are *REVERSED and SET ASIDE*, and the Complaint of respondent Danilo G. Harayo against petitioner Pablo D. Acaylar before the Municipal Trial Court in Cities of Dapitan City, in Civil Case No. 622, is *DISMISSED*, without prejudice. No costs.

SO ORDERED.

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

---

[37] *Sumulong v. Court of Appeals*, G.R. No. 108817, 10 May 1994, 232 SCRA 372, 386-387, citing *Hautea v. Magallon*, 120 Phil. 1307, 1309 (1964).

FIRST DIVISION

[A.M. No. P-07-2363. July 31, 2008]

CONCERNED COURT EMPLOYEE, *complainant, vs.* **ATTY. VIVIAN V. VILLALON-LAPUZ, Clerk of Court, Regional Trial Court, Branch 137, Makati City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; INSUBORDINATION. — The records show that respondent attended 18 court hearings without filing any application for leave of absence in contravention of A.M. No. 98-7-217-RTC, a fact she duly admitted. As observed by the OCA, respondent did not even file a single application for leave of absence in connection with her attendance in the court hearings. Respondent's conduct constitutes insubordination. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively."

2. ID.; CIVIL SERVICE COMMISSION; CIVIL SERVICE RULES; OFFSETTING OF ABSENCES BY WORKING FOR AN EQUIVALENT NUMBER OF HOURS BEYOND APPROVED WORKING HOURS, NOT ALLOWED. — Respondent explained that her immediate superior gave her the option to work beyond office hours to compensate for the few hours she spent in attending the hearings. However, the offsetting of tardiness or absences by working for an equivalent number of minutes or hours by which an employee has been tardy or absent, beyond the regular or approved working hours of the employees concerned, is not allowed.

3. ID.; PUBLIC OFFICERS; JUDICIARY; COURT EMPLOYEES BEAR THE BURDEN OF OBSERVING EXACTING STANDARDS OF ETHICS AND MORALITY. — In *Yrastorza v. Latiza*, we held that "court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the presiding judge to the lowliest clerk, must conduct

themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary."

4. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; INSUBORDINATION; SUSPENSION; PENALTY FOR FIRST-TIME OFFENDER. — Respondent's deliberate act of disobeying a lawful order is punishable as a less grave offense under the Civil Service Law. Under the Revised Uniform Rules on Administrative Cases in the Civil Service, the penalty for insubordination for a first-time offender is suspension for one month and one day to six months. However, since respondent has tendered her resignation effective 1 December 2004, her suspension is no longer possible.

R E S O L U T I O N

CARPIO, *J.*:

This is an administrative complaint against Atty. Vivian V. Villalon-Lapuz (respondent), Clerk of Court of Branch 137, Regional Trial Court- Makati City (RTC-Makati), for unauthorized practice of law and insubordination.

On 12 May 2005, the Office of the Court Administrator (OCA) received an anonymous letter-complaint from a concerned court employee (complainant) of Branch 137, RTC-Makati. Complainant alleged that respondent appeared as private counsel and signed pleadings in a case entitled "*Philippine Shares Corporation v. Spouses Visitacion & Virgilio Villalon*." Complainant inquired whether respondent has been authorized to practice law as private counsel.

The OCA conducted an investigation and found out that as early as 4 August 1998, the Supreme Court issued A.M. No. 98-7-217-RTC. This SC Resolution granted the respondent's request "to appear as counsel in Civil Case No. 86-38066 entitled *Philippine Shares Corporation v. Ma. Visitacion V. Villalon and Heirs of Virgilio V. Villalon'* filed before the Regional Trial Court of Manila, Branch 42, provided that she files the corresponding leave of absence on the scheduled dates of hearing

thereon and provided, further, that she will not use official time in the preparation of the pleadings for the case."[1]

Upon the OCA's verification, the records revealed that respondent attended the following hearings and filed the following applications for leave of absence:

Date of Hearings in Branch 42 of RTC-Manila	Application for Leave of Absence[2]	Remarks
1999		
4 June 1999		Hearing was canceled and reset
2 July 1999		Hearing was canceled and reset
	4-31 August 1999	Maternity Leave
3 September 1999	*1-30 September 1999*	Hearing was canceled and reset/Maternity Leave
1 October 1999	*1 October 1999*	Hearing was canceled and reset/Maternity Leave
8 November 1999		Hearing was canceled and reset
6 December 1999		Hearing was canceled and reset
2000		
	8-9 February 2000	Sick Leave (Severe cough and colds)
24 March 2000		Hearing was canceled and reset
8 May 2000		Testimony of Witness and Presentation of Evidence
	15 May 2000	Birthday Leave
5 June 2000		Testimony of Witness and Presentation of Evidence
14 July 2000	*12, 13, 14 July 2000*	Respondent was absent/ Hearing was canceled and reset/ Sick Leave (pneumonia)

[1] Supreme Court *En Banc* Resolution dated 4 August 1998. A.M. No. 98-7-217-RTC.

[2] The certified copies of respondent's leave applications have been submitted by Atty. Caridad A. Pabello of the Office of Administrative Services.

	3-4 August 2000	Sick Leave (severe cough and colds)
14 August 2000		Testimony of Witness and Presentation of Evidence
8 September 2000		Testimony of Witness and Presentation of Evidence
20 October 2000		Hearing was canceled and reset
2001		
	2-5 January 2001	Sick Leave
	8-12 January 2001	Sick Leave
19 March 2001		Cross-examination of witness
20 April 2001		Hearing was canceled and reset
25 May 2001		Respondent was absent/ Hearing was canceled and reset
27 July 2001		Hearing was canceled and reset
7 September 2001		Respondent gave her manifestation
16 November 2001		Presentation of rebuttal evidence
2002		
22 March 2002		Presentation of rebuttal evidence
3 May 2002		Testimony of witness
14 October 2002		Hearing conducted

In her Comment, respondent admitted that she personally handled the civil case and clarified that she did not only appear as counsel for her parents but also as counsel for herself and her siblings. Respondent stated that her widowed mother had no other means of livelihood and could not afford the services of a counsel. Respondent claimed that she had no intention to violate A.M. No. 98-7-217-RTC. Respondent explained that

she did not file the corresponding application for leave of absence because her immediate superior, retired Justice Santiago Javier Ranada, gave her the option to work beyond office hours to compensate for the few hours that she spent in attending the hearings. Respondent contended that she did not use official time in the preparation of pleadings for the case and she did not receive any remuneration. Respondent, being the lawyer in the family, handled the case to fulfill the promise to her late father.

Respondent alleged that the anonymous complaint was done mainly to harass her and tarnish her name and reputation, as the same was filed a few months after she tendered her resignation on 1 December 2004. Respondent apologized for the mistakes she committed and pleaded that her 10 years of dedication and service to the judiciary be considered in resolving the case.

On 28 June 2007, the OCA issued its Report and Recommendation. The OCA recommended to re-docket this administrative complaint as a regular administrative matter and to fine respondent ₱11,000.

The OCA ruled that respondent failed to obey the Order of the Supreme Court when she intentionally did not file applications for leave of absence for her court appearances. This is a flagrant disobedience and respondent should have taken the necessary steps to guarantee the compliance required by law so as not to disrupt her duties in the administration of justice.

On 22 August 2007, this Court issued a Resolution treating this case as a regular administrative matter.

After a careful review of the records, the Court finds the evidence on record sufficient to support the OCA's findings and recommendation.

There is no doubt that this Court has authorized respondent to appear as counsel for her family in Civil Case No. 86-38066. Thus, in the instant administrative case, the only issue for resolution is whether respondent is guilty of the charges of insubordination for failing to file her applications for leave of absence on her court appearances as mandated in A.M. No. 98-7-217-RTC.

The records show that respondent attended 18 court hearings without filing any application for leave of absence in contravention of A.M. No. 98-7-217-RTC, a fact she duly admitted. As observed by the OCA, respondent did not even file a single application for leave of absence in connection with her attendance in the court hearings. Respondent's conduct constitutes insubordination. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively."[3]

Respondent explained that her immediate superior gave her the option to work beyond office hours to compensate for the few hours she spent in attending the hearings. However, the offsetting of tardiness or absences by working for an equivalent number of minutes or hours by which an employee has been tardy or absent, beyond the regular or approved working hours of the employees concerned, is not allowed.[4]

In *Yrastorza v. Latiza*,[5] we held that "court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the presiding judge to the lowliest clerk, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary."

Respondent's deliberate act of disobeying a lawful order is punishable as a less grave offense under the Civil Service Law. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[6] the penalty for insubordination for a first-time offender is suspension for one month and one day to six

---

[3] *Cojuangco, Jr. v. Palma*, A.C. No. 2474, 30 June 2005, 462 SCRA 310.

[4] Section 9, Rule XVII, CSC Resolution No. 91-1631, Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Rules, dated 27 December 1991.

[5] 462 Phil. 145 (2003).

[6] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

months.[7] However, since respondent has tendered her resignation effective 1 December 2004, her suspension is no longer possible.

Section 53, Rule IV of the Revised Uniform Rules, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Since respondent is a first time offender and had served the judiciary for 10 years, a fine of ₱10,000 is in order.

WHEREFORE, we find respondent Atty. Vivian V. Villalon-Lapuz guilty of insubordination and fine her Ten Thousand Pesos (₱10,000). This amount may be deducted from whatever benefits respondent is entitled after her voluntary resignation.

Let a copy of this Resolution be attached to the 201 file of respondent.

SO ORDERED.

Puno, C.J. (Chairperson), Austria-Martinez,[*] *Corona,* and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 151983-84. July 31, 2008]

JOSE MAX S. ORTIZ, *petitioner, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISTINCTION BETWEEN QUESTION OF LAW AND

[7] Rule IV, Section 52(B)(5).

[*] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

QUESTION OF FACT. — This Court has consistently ruled that a **question of law** exists when there is a doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a **question of fact** when the doubt or difference arises as to the alleged truth or falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. 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.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; DISTINCTION BETWEEN ORDINARY CONCEPT AND EXTRAORDINARY CONCEPT AS RELATED TO ARTICLE III OF THE LABOR CODE. — In *PCL Shipping Philippines, Inc. v. National Labor Relations Commission* citing *Dr. Reyes v. Court of Appeals*, this Court enunciated that there are two commonly accepted **concepts of attorney's fees**, the so-called ordinary and extraordinary. In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former has rendered to the latter. The basis of this compensation is the fact of the attorney's employment by and his agreement with the client. In its **extraordinary concept**, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances in which these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically paragraph 7 thereof, which pertains to actions for recovery of wages, and is **payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney's fees.** Article 111 of the Labor Code, as amended, specifically provides: **ART. 111. *ATTORNEY'S FEES.*** — (a) In cases of unlawful withholding of wages the culpable party **may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.** (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative

proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; IN CASE OF DOUBT, ALL LABOR LEGISLATION AND ALL LABOR CONTRACTS SHALL BE CONSTRUED IN FAVOR OF THE SAFETY AND DECENT LIVING FOR THE LABORER. — Still according to *PCL Shipping*, Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although express findings of fact and law are still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. In carrying out and interpreting the Labor Code's provisions and implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code, which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations, shall be resolved in favor of labor"; and Article 1702 of the Civil Code, which provides that "in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer."

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; INCONSISTENT POSITION TAKEN BY PETITIONER ORTIZ. — In fact, petitioner challenges the due execution of the Deeds of Release, Waiver and Quitclaim and may not now take an inconsistent position by using the provisions of the very same Deeds as proof that complainants impliedly or expressly agreed that the attorney's fees awarded by the NLRC pertained to him under the ordinary concept of attorney's fees.

5. ID.; ID.; REAL PARTY-IN-INTEREST; MEANING OF "INTEREST." — The established rule is that a real party in interest is one who would be benefited or injured by the judgment, or one entitled to the avails of the suit. The word "interest," as contemplated by the Rules, means material interest or an interest in issue and to be affected by the judgment, as distinguished from mere interest in the question involved or a mere incidental interest. Stated differently, the rule refers to a real or present substantial interest as distinguished from

a mere expectancy or a future, contingent, subordinate, or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff in an action.

6. ID.; ID.; ID.; TWO REQUIREMENTS. — Section 2, Rule 3 of the Rules of Court has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Necessarily, the purposes of this provision are 1) to prevent the prosecution of actions by persons without any right or title to or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid a multiplicity of suits; and 4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.

7. LEGAL ETHICS; ATTORNEY'S FEES; COMPENSATION FOR ATTORNEY'S SERVICES, EXPLAINED. — In addition, as found by the Court of Appeals, when the complainants executed their respective Deeds of Release, Waiver and Quitclaim, petitioner already received attorney's fees equivalent to 10% of the amounts paid to the complainants in accordance with the Deeds, as evidenced by several cash vouchers and checks payable to petitioner and signed by his representative. Even petitioner himself admitted this fact. This would show that petitioner has been compensated for the services he rendered the complainants. It may do well for petitioner to remember that as a lawyer, he is a member of an honorable profession, the **primary vision of which is justice. The practice of law is a decent profession and not a money-making trade. Compensation should be but a mere incident.**

8. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DEEDS OF RELEASE, WAIVER AND QUITCLAIM; REQUISITES FOR VALIDITY. — There is no specific provision in the Labor Code, as amended, which requires the conformity of petitioner, as the complainants' counsel, to make their Deeds of Release, Waiver and Quitclaim valid. The only requisites for the validity of any Deed of Release, Waiver and Quitclaim are the following: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or

prejudicial to a third person with a right recognized by law. In this case, it cannot be questioned that those requisites were completely satisfied, making the Deeds of Release, Waiver and Quitclaim individually executed by the complainants valid.

APPEARANCES OF COUNSEL

Ortiz Sedonio & Associates for petitioners.
Abello Angara Regala Cruz for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This case is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to modify or partially reconsider the Decision[1] dated 22 August 2001 and Resolution[2] dated 9 January 2002 of the Court of Appeals in CA-G.R. SP No. 54576-77, **insofar as the award of attorney's fees is concerned**. Herein petitioner Jose Max S. Ortiz prays that this Court affirm the award of attorney's fees equivalent to 10% of the monetary award adjudged by the National Labor Relations Commission (NLRC) in its Decisions dated 21 July 1995 and 25 July 1995 in NLRC Cases No. V-0255-94[3] and No. V-0068-95,[4] respectively. Petitioner asserts that he is entitled to the said attorney's fees.

Petitioner is a member of the Philippine Bar who represented the complainants in NLRC Cases No. V-0255-94 and No.

---

[1] Penned by Associate Justice B. A. Adefuin-De La Cruz with Associate Justices Andres B. Reyes, Jr. and Josefina Guevara-Salonga, concurring; *rollo*, pp. 23-42.

[2] *Rollo,* pp. 50-51.

[3] Penned by Commissioner Amorito V. Cañete with Presiding Commissioner Irenea E. Ceniza and Commissioner Bernabe S. Batuhan, concurring; CA *rollo*, Volume I, pp. 76-89.

[4] Penned by Presiding Commissioner Irenea E. Ceniza with Commissioners Bernabe S. Batuhan and Amorito V. Cañete, concurring; CA *rollo*, Volume II, pp. 105-115.

V-0068-95 instituted against herein private respondent San Miguel Corporation sometime in 1992 and 1993.

Private respondent, on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is primarily engaged in the manufacture and sale of food and beverage particularly beer products. In line with its business, it operates breweries and sales offices throughout the Philippines.[5] The complainants in NLRC Cases No. V-0255-94 and No. V-0068-95 were employees at private respondent's Sales Offices in the provinces.

NLRC Case No. V-0255-94 (Aguirre Cases)

In 1992, several employees from the Bacolod, Cadiz, and Himamaylan Beer Sales Offices filed with the Labor Arbiter separate complaints against private respondent for illegal dismissal with prayer for reinstatement with backwages; elevation of employment status from casual-temporary to regular-permanent reckoned after six months from the start of complainants' employment; underpayment of salaries; non-payment of holiday pay, service incentive leave pay, allowances and sick leaves; non-payment of benefits under the existing Collective Bargaining Agreements (CBA); **attorney's fees**; moral, exemplary and other damages; and interest. The foregoing complaints were consolidated and initially docketed as RAB Cases No. 06-01-10031-92; 06-01-10048-92; 06-01-10049-92; 06-02-10210-92; 06-02-10211-92; and 06-03-10255-92 (hereinafter collectively referred to as the ***Aguirre Cases***). After conducting a full-blown trial, the parties were given the opportunity to submit their respective memoranda. Subsequently, the cases were submitted for resolution.

On 30 June 1994, Labor Arbiter Reynaldo J. Gulmatico (Labor Arbiter Gulmatico) rendered a Decision[6] in the *Aguirre Cases* finding all the complainants to have been illegally dismissed. He ordered complainants' reinstatement to their previous or

---

[5] CA *rollo*, Volume I, p. 148.

[6] CA *rollo*, Volume I, pp. 864-893.

equivalent positions without loss of seniority rights. He also ordered private respondent to pay the complainants (1) full backwages and other CBA benefits in the total amount of ₱6,197,952.88; (2) rice subsidy or its monetary equivalent; and (3) **attorney's fees equivalent to 10% of the monetary award or in the amount of ₱619,795.28**. Labor Arbiter Gulmatico, however, dismissed complainants' claim for overtime pay, holiday pay, 13th month pay differential, service incentive leave pay, moral damages and all other claims for lack of merit.[7]

Unsatisfied with Labor Arbiter Gulmatico's monetary and economic awards, complainants appealed to the NLRC, where the *Aguirre Cases* were collectively docketed as NLRC Case No. V-0255-94. The NLRC would later render a Decision dated 21 July 1995 in the *Aguirre Cases* affirming the Decision of Labor Arbiter Gulmatico, with the following modifications: (1) granting sales commission to the complainants and adopting their computation thereof in their Appeal Memorandum[8] filed before the NLRC; (2) adjusting and/or reducing the amounts awarded to complainants Alfredo Gadian, Jr., Renato Junsay, Agustines Llacuna, and Florencio de la Piedra depending on the dates they were employed; (3) determining that Modesto Jabaybay, who died on 28 December 1993, was to receive only the amount of ₱356,128.02; (4) declaring that all the complainants except Romeo Magbanua, who withdrew his complaint, were entitled to whatever benefits were given under the CBA; and (5) that complainants Romeo Magbanua and Modesto Jabaybay shall no longer be reinstated.[9]

Private respondent moved for the reconsideration of the aforesaid 21 July 1995 NLRC Decision, but its motion was denied by the NLRC in its Resolution[10] dated 27 February 1996.

---

[7] *Id.* at 888-889.

[8] *Id.* at 997-1005.

[9] *Id.* at 84-86.

[10] Penned by Commissioner Amorito V. Cañete with Presiding Commissioner Irenea E. Cerniza and Commissioner Bernabe S. Batuhan, concurring; CA *rollo*, Volume I, pp. 92-105.

NLRC Case No. V-0068-95 (Toquero Case)

While the *Aguirre Cases* were still pending resolution by Labor Arbiter Gulmatico, three other employees at the San Carlos Sales Office filed with the Labor Arbiter a similar complaint for illegal dismissal against private respondent in 1993. Their complaint was docketed as RAB Case No. 06-07-10404-93 (hereinafter referred to as the *Toquero Case*).

On 26 December 1994, Labor Arbiter Ray Allan T. Drilon (Labor Arbiter Drilon) rendered his Decision[11] in the *Toquero Case* also ruling that the three complainants were illegally dismissed. Thus, he ordered the complainants' immediate reinstatement to their former positions without loss of seniority rights. He ordered private respondent to pay complainants (1) backwages and other benefits in the amount of ₱572,542.50; (2) all benefits, privileges and rights enjoyed by the private respondent's regular employees in the total amount of ₱339,055.00; (3) a total of 159 sacks of rice ration; (4) sales commissions based on the monthly sales of beer sold by their office for the last three years; and (5) **attorney's fees in the amount of ₱91,159.75**.[12]

Again, the complainants were not contented with Labor Arbiter Drilon's Decision, and they appealed their case to the NLRC which was then docketed as NLRC Case No. V-0068-95. On 25 July 1995, the NLRC rendered a Decision modifying the 26 December 1994 Decision of Labor Arbiter Drilon by ordering the private respondent to pay the complainants the following: (1) additional awards of sales commission; (2) tailoring allowance; (3) monetary equivalent of their uniform for two years consisting of 24 sets of t-shirts and 6 pairs of pants; and (4) **attorney's fees of 10% of the total monetary award or ₱198,296.95**.[13]

---

[11] CA *rollo*, Volume II, pp. 80-103.

[12] *Id.* at 102.

[13] *Id.* at 113-114.

In its Resolution[14] dated 9 October 1995, the NLRC partially granted private respondent's motion for reconsideration by allowing the deduction from the award of backwages any earnings of complainants elsewhere during the pendency of their case.[15]

CA-G.R. SP No. 54576-77

Failing to get a favorable ruling from the NLRC in both the *Aguirre* and *Toquero Cases*, private respondent elevated the NLRC Decisions to this Court *via* a Petition for *Certiorari*, where they were docketed as G.R. No. 124426[16] and G.R. No. 122975, respectively.[17] On 15 July 1996, this Court issued a Resolution[18] consolidating the two cases. In another Resolution[19] dated 30 June 1999, this Court referred the said cases to the Court of Appeals conforming to its ruling in *St. Martin Funeral Home v. NLRC and Bienvenido Aricayos*.[20] The Court of Appeals accepted the consolidated cases in its Resolution[21] dated 7 September 1999, and docketed the same as CA-G.R. SP No. 54576-77.

While the private respondent's Petitions for *Certiorari* were pending before the Court of Appeals, all but one of the remaining complainants in the *Aguirre* and *Toquero Cases* appeared on various dates before Labor Arbiters Gulmatico and Drilon, and in the presence of two witnesses, signed separate Deeds of

---

[14] Penned by Presiding Commissioner Irenea E. Ceniza with Commissioners Bernabe S. Batuhan and Amorito V. Cañete, concurring; CA *rollo*, Volume II, pp. 152-155.

[15] CA *rollo*, Volume II, p. 154.

[16] CA *rollo*, Volume I, pp. 3-73.

[17] CA *rollo*, Volume II, pp. 3-47.

[18] CA *rollo*, Volume I, p. 1148.

[19] *Id.* at 1453-1454; CA *rollo*, Volume II, pp. 759-760.

[20] 356 Phil. 811 (1998).

[21] Penned by Associate Justice B. A. Adefuin-De la Cruz with Associate Justices Fermin A. Martin, Jr. and Presbitero J. Velasco, Jr. (now a member of the Court), concurring; CA *rollo*, Volume II, pp. 762-763.

Release, Waiver and Quitclaim[22] in favor of private respondent. Based on the Deeds they executed, the complainants agreed to settle their claims against private respondent for amounts less than what the NLRC actually awarded. Private respondent withheld 10% of the total amount agreed upon by the parties in the said Deeds as attorney's fees and handed it over to petitioner.

Private respondent then attached the Deeds of Release, Waiver and Quitclaim to its Manifestation and Motion[23] filed before the appellate court. On 22 August 2001, the Court of Appeals rendered a Decision[24] in CA-G.R. SP No. 54576-77 affirming the NLRC Decision dated 21 July 1995 and Resolution dated 27 February 1996 in the *Aguirre Cases*, only insofar as it concerned complainant Alfredo Gadian, Jr. (complainant Gadian), the only complainant who did not execute a Deed of Release, Waiver and Quitclaim. With respect to the other complainants in the *Aguirre* and *Toquero Cases*, their complaints were dismissed on account of their duly executed Deeds of Release, Waiver and Quitclaim.[25]

Private respondent moved for the partial reconsideration of the 22 August 2001 Decision of the Court of Appeals, seeking the reversal and setting aside of the 22 August 2001 Decision of the Court of Appeals in CA-G.R. SP. No. 54576-77, which affirmed the 21 July 1995 Decision and 27 February 1996 Resolution of the NLRC in the *Aguirre Cases*, insofar as complainant Gadian was concerned; and the dismissal of complainant Gadian's complaint against private respondent for lack of merit.[26] Complainant Gadian and his counsel, herein petitioner, for their part, likewise moved for the partial reconsideration of the same Decision of the appellate court praying that the award of attorney's fees of 10% should be based on

---

[22] CA *rollo*, Volume I, pp. 1408-1426, 1433-1447; CA *rollo*, Volume II, pp. 771-776, 829-836, 994-1006, 1015-1020, 1038-1043, 1109-1111.

[23] *Id.* at 1403-1407, 1427-1432; *id.* at 765-770, 824-828, 985-995, 1007-1014.

[24] *Rollo*, pp. 23-42.

[25] *Id.* at 42.

[26] CA *rollo*, Volume II, pp. 1157-1180.

the monetary awards adjudged by the NLRC.[27] In a Resolution[28] dated 9 January 2002, the appellate court denied both motions.

G.R. No. 151421 and No. 151427

Private respondent appealed before this Court by filing a Petition for Review, docketed as G.R. No. 151421 and No. 151427. However, private respondent's Petition was denied due course by this Court in a Resolution[29] dated 18 March 2002 for failure of the private respondent to show that a reversible error had been committed by the appellate court. The Court also denied private respondent's motion for reconsideration.[30] The denial of the private respondent's Petition in G.R. No. 151421 and No. 151427 became final and executory on 24 July 2002.[31]

G.R. No. 151983-84

Petitioner filed this present Petition for Review on his own behalf, docketed as G.R. No. 151983-84, praying that this Court grant him attorney's fees equivalent to those awarded by the NLRC in the *Aguirre* and *Toquero Cases*. He makes the following lone assignment of error in his Petition:

THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT AWARDING ATTORNEY'S FEES BASED ON THE ORIGINAL AWARD MADE BY THE NLRC-FOURTH DIVISON.[32]

In his Memorandum,[33] petitioner posits the following issues:

---

[27] *Rollo*, pp. 44-48.

[28] *Id.* at 50-51.

[29] CA *rollo*, Volume II, p. 1272.

[30] The Resolution of this Court denying the Motion for Reconsideration of the private respondent was not on the records of this case; thus, the date when the said Resolution was issued cannot be ascertained.

[31] CA *rollo*, Volume II, p. 1274.

[32] *Rollo*, p. 16.

[33] *Id.* at 171-183.

I. WHETHER THE PRESENT PETITION RAISES A QUESTION OF LAW.

II. WHETHER PETITIONER IS A REAL PARTY IN INTEREST TO FILE THE PRESENT PETITION.

III. WHETHER PETITIONER IS ENTITLED TO ADDITIONAL ATTORNEY'S FEES ON TOP OF WHAT WAS ALREADY RECEIVED.[34]

Petitioner alleges that the Decision of the appellate court was prejudicial only insofar as it failed to grant 10% attorney's fees based on the monetary and economic awards adjudged by the NLRC in its Decisions in the *Aguirre* and *Toquero Cases*. Considering that the only complainant who did not execute a Deed of Release, Waiver and Quitclaim, namely, complainant Gadian, obtained a favorable judgment from the Court of Appeals, he was no longer interested in pursuing an appeal; and **petitioner is, thus, constrained to bring the present Petition, with himself as the forced petitioner, for the purpose of recovering the aforesaid attorney's fees**.

In the instant Petition, petitioner is claiming **additional attorney's fees**, representing the difference between the amount as decreed in the NLRC Decisions in the *Aguirre* and *Toquero Cases* and the amount he already received from private respondent, equivalent to the 10% attorney's fees the latter withheld from the amounts it actually paid to the complainants who signed the Deeds of Release, Waiver and Quitclaim.

Petitioner avows that he is entitled to attorney's fees based on the monetary awards as stated in the Decisions of the NLRC in the *Aguirre* and *Toquero Cases* because (1) the Deeds of Release, Waiver and Quitclaim executed by all but one of the complainants during the pendency of CA-G.R. SP. No. 54576-77 before the Court of Appeals were done without his conformity; (2) he, together with his assistant lawyers, had invested substantial time and effort for more than seven or eight years and even spent considerable amounts of personal money for the prosecution of these consolidated cases from the Labor Arbiter up to this

[34] *Id*. at 175.

Court; hence, it would be grossly unfair for the petitioner to receive only 10% of the financial assistance given to the complainants by virtue of the Deeds of Release, Waiver and Quitclaim they signed; and (3) petitioner's right to attorney's fees has become vested after rendering painstaking legal services to the complainants, making him and his collaborating counsels entitled to the full amount of attorney's fees as awarded by the NLRC.

While this Court concedes that the instant Petition for Review raises a question of law, it denies the Petition for lack of merit and lack of petitioner's standing to file the same.

This Court has consistently ruled that a **question of law** exists when there is a doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a **question of fact** when the doubt or difference arises as to the alleged truth or falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[35] 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.[36]

In the case at bar, the core issue presented by the petitioner is with respect to the amount of attorney's fees to which he should be entitled: whether he is entitled to the amount of attorney's fees as adjudged by the NLRC in its Decisions in the *Aguirre* and *Toquero Cases* or only to the 10% of the amounts actually paid to his clients, the complainants who signed the Deeds of Release, Waiver and Quitclaim.

The aforesaid issue evidently involves a question of law. In determining whether the petitioner should be entitled to the

---

[35] *Tamondong v. Court of Appeals*, G.R. No. 158397, 26 November 2004, 444 SCRA 509, 517-518.

[36] *Crisologo v. Globe Telecom, Inc.*, G.R. No. 167631, 16 December 2005, 478 SCRA 433, 441.

attorney's fees stated in the NLRC Decisions, this Court does not need to go over the pieces of evidence submitted by the parties in the proceedings below to determine their probative value. What it needs to do is ascertain and apply the relevant law and jurisprudence on the award of attorney's fees to the prevailing parties in labor cases.

Article 111 of the Labor Code, as amended, specifically provides:

ART. 111. ***ATTORNEY'S FEES.*** — (a) In cases of unlawful withholding of wages the culpable party **may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered**.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered. (Emphasis supplied.)

In *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*[37] citing *Dr. Reyes v. Court of Appeals*,[38] this Court enunciated that there are two commonly accepted **concepts of attorney's fees,** the so-called ordinary and extraordinary. In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former has rendered to the latter. The basis of this compensation is the fact of the attorney's employment by and his agreement with the client. In its **extraordinary concept**, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances in which these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically paragraph 7[39]

---

[37] G.R. No. 153031, 14 December 2006, 511 SCRA 44, 64.

[38] 456 Phil. 520, 539-540 (230), citing *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*, 336 Phil. 705, 712 (1997).

[39] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

thereof, which pertains to actions for recovery of wages, and is **payable not to the lawyer but to the client**, **unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof**.[40] **Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney's fees**.

Still according to *PCL Shipping*, Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although express findings of fact and law are still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. In carrying out and interpreting the Labor Code's provisions and implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code, which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations, shall be resolved in favor of labor"; and Article 1702 of the Civil Code, which provides that "in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer."[41]

Based on the foregoing, the attorney's fees awarded by the NLRC in its Decisions in the *Aguirre* and *Toquero Cases* pertain to the complainants, petitioner's clients, as indemnity for damages; and not to petitioner as compensation for his legal services. Records show that the petitioner neither alleged nor proved that his clients, the complainants, willingly agreed that the award of attorney's fees would accrue to him as an additional compensation or part thereof.

What the complainants explicitly agreed to in their individual Deeds of Release, Waiver, and Quitclaim was that the 10%

---

[40] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, *supra* note 37 at 64-65.

[41] *Id.* at 65.

attorney's fees of the petitioner shall be deducted from the **amount of the gross settlement**. Provision 8 of the Deeds of Release, Waiver and Quitclaim reads:

> 8. x x x. As a client, I have the right to decide on the matter of whether to settle my case and the amount of the settlement, which right I am now exercising without prejudice to my counsel's claim to the legally mandated 10% attorney's fees. **As a matter of fact, I had requested and [herein private respondent] has complied with it, that [private respondent] deduct from the gross settlement 10% representing attorney's fees of [herein petitioner] and make a check payable to the latter in such amount**.[42] (Emphasis supplied.)

The foregoing provision cannot be taken to mean that the complainants concerned agreed that the attorney's fees awarded by the NLRC pertained to petitioner as additional compensation or part thereof since (1) the Deeds were executed between complainants and private respondent, the petitioner was not even a party to the said documents; and (2) private complainants' request that private respondent withhold 10% attorney's fees to be payable to petitioner was in relation to the amount of gross settlement under the Deeds and not to the amounts awarded by the NLRC. In fact, petitioner challenges the due execution of the Deeds, and may not now take an inconsistent position by using the provisions of the very same Deeds as proof that complainants impliedly or expressly agreed that the attorney's fees awarded by the NLRC pertained to him under the ordinary concept of attorney's fees.

Thus, this Court has no recourse but to interpret the award of attorney's fees by the NLRC in its extraordinary concept. And since the attorney's fees pertained to the complainants as indemnity for damages, it was totally within the complainants' right to waive the amount of said attorney's fees and settle for a lesser amount thereof in exchange for the immediate end to litigation. Petitioner cannot prevent complainants from compromising and/or withdrawing their complaints at any stage of the proceedings just to protect his anticipated attorney's fees.

---

[42] CA *rollo*, Volume II, p. 739.

Even assuming *arguendo* that the complainants in the *Aguirre* and *Toquero Cases* did indeed agree that the attorney's fees awarded by the NLRC should be considered in their ordinary concept, *i.e.*, as compensation for petitioner's services, we refer back to Article 111 of the Labor Code, as amended, which provides that the attorney's fees should be equivalent to 10% of the amount of wages recovered. Since the complainants decided to settle their complaints against the private respondent, the amounts actually received by them pursuant to the Deeds of Release, Waiver and Quitclaim are the amounts "recovered" and the proper basis for determining the 10% attorney's fees.

Petitioner cannot claim further to be a real party in interest herein for the very same reasons already discussed above.

It is elementary that it is only in the name of a real party in interest that a civil suit may be prosecuted.[43] Section 2, Rule 3 of the 1997 Revised Rules of Civil Procedure, as amended, provides:

> **SEC. 2**. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The established rule is that a real party in interest is one who would be benefited or injured by the judgment, or one entitled to the avails of the suit. The word "interest," as contemplated by the Rules, means material interest or an interest in issue and to be affected by the judgment, as distinguished from mere interest in the question involved or a mere incidental interest. Stated differently, the rule refers to a real or present substantial interest as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff in an action.[44]

---

[43] *Chua v. Torres*, G.R. No. 151900, 30 August 2005, 468 SCRA 358, 366.

[44] *Dagadag v. Tongnawa*, G.R. Nos. 161166-67, 3 February 2005, 450 SCRA 437, 443-444.

The afore-quoted rule has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Necessarily, the purposes of this provision are 1) to prevent the prosecution of actions by persons without any right or title to or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid a multiplicity of suits; and 4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[45]

In the case at bar, it is beyond cavil that the petitioner is not the real party in interest; hence, he cannot file this Petition to recover the attorney's fees as adjudged by the NLRC in its Decisions dated 21 July 1995 and 25 July 1995 in the *Aguirre* and *Toquero Cases*, respectively. To reiterate, the award of attorney's fees pertain to the prevailing parties in the NLRC cases, namely, the complainants, all but one of whom no longer pursued their complaints against private respondent after executing Deeds of Release, Waiver and Quitclaim. Not being the party to whom the NLRC awarded the attorney's fees, neither is the petitioner the proper party to question the non-awarding of the same by the appellate court.

In addition, as found by the Court of Appeals, when the complainants executed their respective Deeds of Release, Waiver and Quitclaim, petitioner already received attorney's fees equivalent to 10% of the amounts paid to the complainants in accordance with the Deeds, as evidenced by several cash vouchers and checks payable to petitioner[46] and signed by his representative.[47] Even petitioner himself admitted this fact.

This would show that petitioner has been compensated for the services he rendered the complainants. It may do well for petitioner to remember that as a lawyer, he is a member of an

---

[45] *Oco v. Limbaring*, G.R. No. 161298, 31 January 2006, 481 SCRA 348, 358.

[46] CA *rollo*, Volume II, pp. 1058-1077.

[47] *Rollo*, p. 41.

honorable profession, the **primary vision of which is justice**. **The practice of law is a decent profession and not a money-making trade. Compensation should be but a mere incident**.[48]

If petitioner earnestly believes that the amounts he already received are grossly deficient, considering the substantial time and efforts he and his assistant lawyers invested, as well as the personal money he expended for the prosecution of complainants' cases for more than seven or eight years, then petitioner's remedy is not against the private respondent, but against his own clients, the complainants. He should file a separate action for collection of sum of money against complainants to recover just compensation for his legal services, and not the present Petition for Review to claim from private respondent the attorney's fees which were adjudged by the NLRC in favor of complainants as the prevailing parties in the *Aguirre* and *Toquero Cases*.

Finally, as stated earlier, petitioner assails the Deeds of Release, Waiver and Quitclaim executed by the complainants for being executed without his conformity and, thus, in violation of the requirements of the Labor Code. Such argument is specious.

There is no specific provision in the Labor Code, as amended, which requires the conformity of petitioner, as the complainants' counsel, to make their Deeds of Release, Waiver and Quitclaim valid. The only requisites for the validity of any Deed of Release, Waiver and Quitclaim are the following: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.[49] In this case, it cannot be questioned that those requisites were completely satisfied, making the Deeds of Release, Waiver and Quitclaim individually executed by the complainants valid.

---

[48] *Pineda v. De Jesus*, G.R. No. 155224, 23 August 2006, 499 SCRA 608, 613.

[49] *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, 15 April 2005, 456 SCRA 382, 397-398.

Moreover, both the NLRC and the Court of Appeals found the Deeds of Release, Waiver and Quitclaim to be validly and willfully executed by the complainants. The Court of Appeals ruled:

> Further, as correctly stated by the [herein private respondent], to wit:
>
> > 'The separate Deeds of Release, Waiver and Quitclaim were all executed and signed by the private respondents concerned before the Labor Arbiter, Hon. Reynaldo Gulmatico, who handled the case *a quo* and rendered the decision in favor of [complainants therein]. As a matter of course, a Labor Arbiter asks, and even explains, to the person executing a quitclaim before him about the contents and the implications thereof. It is only after the Labor Arbiter has satisfied himself that the quitclaim involved was voluntarily executed by the person concerned and that there is a substantial consideration involved would he sign it.'
>
> "While quitclaims executed by employees are commonly frowned upon as contrary to public policy and are ineffective to bar claims for the full measure of the employees' legal rights, there are legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims which should be respected by the courts as the law between the parties."[50]

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

SO ORDERED.

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

---

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

[*] Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 July 2008.

THIRD DIVISION

[G.R. No. 156310. July 31, 2008]

XERXES A. ABADIANO, *petitioner, vs.* **SPOUSES JESUS and LOLITA MARTIR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; SUPREME COURT, NOT A TRIER OF FACTS; EXCEPTIONS. — It is well settled that the findings of fact of the trial court, especially when affirmed by the CA, are accorded the highest degree of respect, and generally will not be disturbed on appeal. Such findings are binding and conclusive on the Court. Further, it is not the Court's function under Rule 45 of the 1997 Revised Rules of Civil Procedure to review, examine and evaluate or weigh the probative value of the evidence presented. The jurisdiction of the Court in a petition for review under Rule 45 is limited to reviewing only errors of law. Unless the case falls under the recognized exceptions, the rule shall not be disturbed. However, this Court has consistently recognized the following exceptions: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. ID.; ID.; IMPUGNING DUE EXECUTION OF DOCUMENT; EFFECTIVE SPECIFIC DENIAL. — Borne very clearly by

the records is the defendants' repudiation of the existence of the sale in their Answer with Counterclaim. Likewise, petitioner specifically denied the allegations in paragraph 5 of the Complaint. He alleged that the lot "had never been sold or alienated and the same still remains intact as the property of the Intervenor and his co-owners by operation of law." These statements were enough to impugn the due execution of the document. While it is true that this Court had previously ruled that mere denials would not have sufficed to impeach the document, in this case, there was an effective specific denial as contemplated by law in accordance with our ruling that — defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either. It was error then for the RTC to have brushed aside this issue and then make so sweeping a conclusion in the face of such opposition. In light of this challenge to the very existence of the *Compra Y Venta,* the trial court should have first resolved the issue of the document's authenticity and due execution before deciding on its validity. Unfortunately, the CA did not even discuss this issue.

3. ID.; EVIDENCE; ORIGINAL DOCUMENT; UNAVAILABILITY; CASE AT BAR. — The Rule states that when the original document is unavailable, has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. In the case at bar, respondents failed to establish that the offer in evidence of the document was made in accordance with any of the exceptions allowed under the abovequoted rule, and yet, the trial court accepted the document as genuine and proceeded to determine its validity based on such assumption.

4. ID.; ID.; NOTARIAL DOCUMENTS; ERRORS IN NOTARIAL INSCRIPTION; CASE AT BAR. — We stress that a notarial document is evidence of the facts in the clear unequivocal

manner therein expressed and has in its favor the presumption of regularity. In this case, while it is true that the error in the notarial inscription would not have invalidated the sale — if indeed it took place — the same error would have meant that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved. Accordingly, respondents not having proven the due execution and genuineness of the purported *Compra Y Venta*, the weight of evidence preponderates in favor of petitioner.

5. CIVIL LAW; LAND REGISTRATION; LAND REGISTRATION PROCEEDINGS; INDEFEASIBILITY AND IMPRESCRIPTIBILITY ARE CORNERSTONES. — Under the *Property Registration Decree*, no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. Indefeasibility and imprescriptibility are the cornerstones of land registration proceedings. Barring any mistake or use of fraud in the procurement of the title, owners may rest secure on their ownership and possession once their title is registered under the protective mantle of the Torrens system.

6. REMEDIAL LAW; CIVIL PROCEDURE; ASSERTION OF A RIGHT; LACHES. — Laches has been defined as neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim. The four basic elements of *laches* are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice

to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred.

7. ID.; EVIDENCE; LACHES; EVIDENTIARY IN NATURE. — The reason for the rule is not simply the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court finds that the position of the parties will change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect. Though laches applies even to imprescriptible actions, its elements must be proved positively. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.

8. ID.; ID.; ID.; ID.; CASE AT BAR. — That petitioner and his co-heirs waited until the death of Amando Bañares to try and occupy the land is understandable. They had to be careful about the actions they took, lest they sow dissent within the family. Furthermore, they knew that their parents revered Amando. The Court has recognized that this reaction cannot be characterized as such delay as would amount to laches, thus: in determining whether a delay in seeking to enforce a right constitutes laches, the existence of a confidential relationship between the parties is an important circumstance for consideration, a delay under such circumstances not being so strictly regarded as where the parties are strangers to each other. The doctrine of laches is not strictly applied between near relatives, and the fact that parties are connected by ties of blood or marriage tends to excuse an otherwise unreasonable delay.

9. ID.; ID.; ID.; ID.; RESPONDENTS-SPOUSES WITHIN A 60-YEAR PERIOD HAVE FAILED TO EVEN HAVE THE ALLEGED SALE ANNOTATED ON THE TITLE OF THE PROPERTY. — In sum, we find that petitioner is not guilty of such neglect or inaction as would bar his claim to the property in question. In contrast, it is most telling that respondents, who are claiming to have been in possession of the property by virtue of an alleged duly constituted sale for almost 60 years, have themselves failed within that long period to have the same

property transferred in their name or even only to have the sale annotated on the title of the property.

10. CIVIL LAW; DAMAGES; MORAL DAMAGES; EXPERIENCED EMOTIONAL AND MENTAL SUFFERINGS MUST BE PROVEN; EXEMPLARY DAMAGES ARE AWARDED WHERE MORAL DAMAGES ARE GRANTED. — The claims for moral damages must be anchored on a definite showing that the claiming party actually experienced emotional and mental sufferings. In this case, we find that petitioner's testimony that he suffered from sleepless nights from worrying about this case and considering the great distance he had to travel from his home in Tacloban to see the case through are enough bases to award him moral damages. With the award of moral damages, exemplary damages are likewise in order.

11. ID.; ID.; ATTORNEY'S FEES; GRANT DEPENDS ON THE CIRCUMSTANCES OF EACH CASE AND LIES WITHIN THE DISCRETION OF THE COURT. — Attorney's fees are recoverable when exemplary damages are awarded, or when the court deems it just and equitable. The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. Given the circumstances of this case, we grant the prayer for attorney's fees.

APPEARANCES OF COUNSEL

Lucinius M. Abadiano for petitioner.
Infante Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals (CA) dated March 14, 2002 and its Resolution[2] dated November 21, 2002 in CA-G.R.

[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 20-32.

[2] *Id*. at 40.

CV No. 51679. The CA affirmed the Decision of the Regional Trial Court (RTC) of Kabankalan, Negros Occidental[3] declaring respondents as the owners of the property in question.

The case stemmed from an action for quieting of title and/or recovery of possession[4] of a parcel of land filed by herein respondents against Roberto Abadiano, Faustino Montaño, and Quirico Mandaguit. Petitioner Xerxes A. Abadiano intervened in that case.

Lot No. 1318 of the Kabankalan Cadastre consists of 34,281 square meters covered by Original Certificate of Title (OCT) No. 20461 issued on November 19, 1923 in the name of the spouses Inocentes Bañares and Feliciana Villanueva. Before the issuance of OCT No. 20461, however, Inocentes and the heirs of Feliciana Villanueva (who had predeceased her husband) executed an Agreement of Partition dated June 1, 1922 over Lot No. 1318. The lot was partitioned and distributed as follows: (1) 14,976 sq m denominated as Lot No. 1318-A, in favor of Demetrio Bañares; (2) 10,125 sq m denominated as Lot No. 1318-B, in favor of Ramon and David Abadiano (grandchildren of Inocentes and Feliciana); and (3) 10,180 sq m denominated as Lot No. 1318-C, in favor of Amando Bañares. The partition is embodied in a Deed of Partition executed on June 1, 1922 and notarized the following day by Notary Public Jose Peralta with notarial inscriptions "Reg. No. 64, Pag. 69, *Libro* III."[5]

On September 30, 1939, David Abadiano, who was absent during the execution of the Agreement of Partition, executed a Deed of Confirmation acknowledging and ratifying the document of partition.[6]

OCT No. 20461 was administratively reconstituted on February 15, 1962 and in lieu thereof OCT No. RO-8211 (20461) was issued over Lot No. 1318, still in the name of Inocentes Bañares

---

[3] Penned by Judge Rodolfo S. Layumas, *rollo*, pp. 41-60.

[4] Civil Case No. 207 (1331).

[5] *Rollo*, pp. 4-5.

[6] *Id.* at 5.

and Felicidad Villanueva. Annotated at the back of the reconstituted title were the Agreement of Partition and the Deed of Confirmation.[7]

On June 14, 1957 Demetrio Bañares sold his share of the lot to his son, Leopoldo. The same was annotated at the back of OCT No. RO-8211 (20461).[8]

Subsequently, on February 21, 1962, Leopoldo Bañares filed before the Court of First Instance (CFI) of Negros Occidental an *ex-parte* petition praying for: first, the confirmation of the Agreement of Partition, the Conformity executed by David Abadiano, and the Deed of Sale between him and his father; and second, the cancellation of OCT No. RO-8211 (20461) and, in lieu thereof, the issuance of a new certificate of title over the property. In an Order dated February 22, 1962, the court ordered the cancellation of OCT No. RO-8211 (20461) and the issuance of a new certificate of title in the names of Dr. Leopoldo Bañares, Amando Bañares, and Ramon and David Abadiano. Pursuant thereto, Transfer Certificate of Title (TCT) No. T-31862 was issued by the Register of Deeds for Negros Occidental.[9]

Petitioner insists that this is still the valid and subsisting title over Lot No. 1318 and that no sale of the portion pertaining to Ramon and David Abadiano ever took place.[10]

On the other hand, respondent spouses alleged that, prior to the issuance of TCT No. T-31862, Ramon Abadiano, for himself and on behalf of David Abadiano, had already sold their rights and interests over Lot No. 1318-C[11] to Victor Garde. The sale was allegedly evidenced by a document of sale (*Compra Y Venta*)

---

[7] *Id*. at 6.

[8] Records, p. 122.

[9] Order of the Court of First Instance of Negros Occidental, *id*. at 130-131.

[10] *Rollo*, p. 6.

[11] Respondents mistakenly identified the subject property as Lot No. 1318-C when in fact they were referring to Lot No. 1318-B. Respondents admitted the mistake in their Answer to Intervenor's Answer in Intervention with Counterclaim. (Records, p. 139.)

dated June 3, 1922 and acknowledged before Notary Public Jose Peralta and bearing notarial inscription "Doc. No. 64, Pag. No. 60, Book No. III, series of 1922." The sale was allegedly affirmed by David Abadiano in a document dated September 30, 1939.[12]

They further alleged that from the time of the sale, Victor Garde and his heirs were in continuous, public, peaceful, and uninterrupted possession and occupation in the concept of an owner of Lot No. 1318-C.[13] On December 29, 1961, the heirs of Victor Garde sold their rights and interests over Lot No. 1318-C[14] to Jose Garde, who immediately took possession thereof. Jose Garde continuously planted sugarcane on the land until he sold the property to Lolita Martir in 1979.[15]

After acquiring the property, respondent spouses continued to plant sugarcane on the land. Sometime in March 1982, after respondent Jesus Martir harvested the sugarcane he had planted on Lot No. 1318-C, defendant below Roberto Abadiano (son of Ramon) allegedly entered the property and cultivated the remaining stalks of sugarcane and refused to vacate despite demands to do so. The following year, defendants Roberto Abadiano, Faustino Montaño, and Quirico Mandaguit again harvested the sugarcane on Lot No. 1318-C.[16] Further, the defendants also entered the property and harvested the sugarcane on Lot No. 1318-B,[17] which by then had been acquired by Lolita B. Martir from her adoptive father, Amando Bañares.[18]

Thus, in April 1982, herein respondent-spouses filed the Action to Quiet Title and/or Recovery of Possession with Damages before the then CFI of Negros Occidental.

---

[12] Complaint, records, pp. 2-3.

[13] *Supra* note 11.

[14] *Id*.

[15] *Id*. at 4.

[16] *Id*.

[17] Referring to Lot No. 1318-C.

[18] Records, pp. 4-5.

In their Answer with Counterclaim,[19] defendants denied that the subject property was ever sold by Ramon and David Abadiano, and that, consequently, defendant Roberto Abadiano had inherited the same from Ramon. They also alleged, by way of Special and Affirmative Defenses, that the subject land still belonged to the estate of Ramon and David Abadiano and was never alienated. They alleged further that the act of spouses Martir in planting sugarcane on the land was without Roberto's consent; that Roberto had demanded that the spouses Martir pay him reasonable rental for the land but that they had persistently refused to do so; and that sometime in March 1981, Roberto and the spouses Martir came to an agreement whereby the defendant continued to cultivate the remaining stalks of sugarcane left by plaintiffs and that until the harvest of said sugarcane, plaintiffs never posed any objection thereto.

Xerxes Abadiano intervened in the proceedings before the trial court alleging likewise that his predecessor Ramon Abadiano never sold their share of the property to Victor Garde.[20]

After trial, the court issued a Decision[21] dated June 23, 1995, ruling in favor of the spouses Martir, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants declaring plaintiffs spouses Jesus and Lolita Martir as the true and legitimate owners of portions of Lot No. 1318 Kabankalan Cadastre denominated as Lots 1318-B and 1318-C and ordering:

(1) That the defendants Roberto Abadiano and the intervenor Xerxes Abadiano shall surrender Transfer Certificate of Title No. T-31862 to the Registrar of Deeds of Negros Occidental who is directed to partially cancel said title and issue new Certificate of Title corresponding to Lots 1318-B and 1318-C in the names of the spouses Jesus and Lolita Martir;

(2) That the defendants shall jointly and severally pay to the plaintiffs the amount of Twenty Thousand (₱20,000.00) Pesos

---

[19] Answer with Counterclaim, records, pp. 29-32.

[20] Motion for Intervention, *id*. at 100-102.

[21] *Rollo,* pp. 40-60.

representing the value of the sugarcanes of plaintiffs which defendants harvested and milled with SONEDCO and;

(3) To pay the costs of this suit.

SO ORDERED.[22]

The trial court rejected therein defendants' contention that the *Compra Y Venta* was null and void because the co-owner, David Abadiano, did not sign the same. It held that the Supreme Court has ruled to the effect that the sale by a co-owner of the entire property without the consent of the other co-owners was not null and void but that only the rights of the co-owner-seller are transferred, making the buyer a co-owner. The trial court also held that although the *Compra Y Venta* was not annotated either on the OCT or on the reconstituted OCT, the validity of the sale was not vitiated. The registration or annotation is required only to make the sale valid as to third persons. Thus, the trial court concluded that the *Compra Y Venta* was valid between the parties, Ramon Abadiano and Victor Garde.

The trial court also brushed aside the defendants' contention that the *Compra Y Venta* contained the same notarial inscription as the Deed of Partition. It said that assuming this to be true, this may be considered an error which did not nullify the *Compra Y Venta;* at most, the document would be non-registrable but still valid.

On the contention that the alleged confirmation executed by David Abadiano was for the Deed of Partition and not for the *Compra Y Venta*, the trial court agreed. It, however, interpreted the same to mean that David Abadiano must not have authorized his brother to sell his share in Lot No. 1318-C. The effect was that David Abadiano continued to be one of the registered owners of the property and his heirs stepped into his shoes upon his death.

However, the trial court found that the plaintiffs' (respondents') claim that they and their predecessors-in-interest have been in possession of the property for more than sixty (60) years was duly established. In contrast, the court found that defendants

[22] *Id*. at 59-60.

and intervenor, and their deceased parents, had not been in possession of their share in the property. It held that the defendants and intervenor were guilty of laches for failing to avail of the many opportunities for them to bring an action to establish their right over Lot No. 1318-C.

Defendants appealed to the CA. However, the same was summarily dismissed in a Resolution dated February 11, 1997 due to defendants' failure to pay the required docket fee within the period set. Nonetheless, the records were retained for the appeal of Xerxes Abadiano, intervenor in the trial court.

On March 14, 2002, the CA rendered a Decision affirming the Decision of the RTC *in toto*.[23]

Xerxes Abadiano now comes before this Court raising the following arguments:

A

THE HONORABLE COURT OF APPEALS ERRED, BASED ON ITS MISAPPREHENSION AND/OR OMISSION OF THE FACTS, IN DISREGARDING THE PRIMORDIAL ISSUE OF WHETHER OR NOT THE DEED OF SALE ("*COMPRA Y VENTA*") IS A SPURIOUS DOCUMENT

B

THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONER GUILTY OF LACHES OVER REGISTERED LAND[24]

The Petition is impressed with merit. We believe the trial court and the CA erred in ruling for the respondents. Accordingly, we reverse the assailed Decision and Resolution.

It is well settled that the findings of fact of the trial court, especially when affirmed by the CA, are accorded the highest degree of respect, and generally will not be disturbed on appeal. Such findings are binding and conclusive on the Court. Further, it is not the Court's function under Rule 45 of the 1997 Revised

---

[23] *Id*. at 32.

[24] *Id*. at 10.

Rules of Civil Procedure to review, examine and evaluate or weigh the probative value of the evidence presented. The jurisdiction of the Court in a petition for review under Rule 45 is limited to reviewing only errors of law. Unless the case falls under the recognized exceptions, the rule shall not be disturbed.[25]

However, this Court has consistently recognized the following exceptions: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[26]

In the present case, we find that the trial court based its judgment on a misapprehension of facts, as well as on the supposed absence of evidence which is contradicted by the records.

In appreciating the alleged *Compra Y Venta* presented by respondents, the trial court concluded that "[t]he parties have no quarrel on the existence of a Deed of Sale of a portion of Lot No. 1318 executed by Ramon Abadiano for himself and as representative of David Abadiano, dated June 3, [1922] in favor of Victor Garde."[27]

---

[25] *Bulos, Jr. v. Yasuma*, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 737. (Citations omitted).

[26] *Citibank, N.A. v. Sabeniano*, G.R. No. 156132, October 12, 2006, 504 SCRA 378, 409, citing *Sps. Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998).

[27] *Rollo*, p. 48.

The trial court erred in its conclusion.

Borne very clearly by the records is the defendants' repudiation of the existence of the sale in their Answer with Counterclaim. They stated:

> 2. That defendants admit plaintiffs' allegation in paragraph 4 that there has been no particular designation of lot number (sic) for each of the co-owner (sic) of Lot No. 1318 but specifically deny under oath the other allegations thereof the truth being that the property referred to here as Lot No. 1318 remains undivided to this day that the owners thereof as shown by the TCT No. 31862 co-own the same *pro-indiviso*;
>
> 3. That defendants have no knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5[28] and therefore **specifically deny the same under oath** the truth being that Ramon Abadiano and David Abadiano had not sold the land at bar to anyone and that consequently, defendant Roberto Abadiano had inherited the same from the former; x x x.[29] (emphasis supplied)

Likewise, petitioner specifically denied the allegations in paragraph 5 of the Complaint. He alleged that the lot "had never been sold or alienated and the same still remains intact as the property of the Intervenor and his co-owners by operation of law."[30]

---

[28] Paragraph 5 reads: "That prior to the issuance of TCT No. T-31862, of Lot No. 1318, Ramon Abadiano for himself and in behalf of David Abadiano had already sold and conveyed their rights and interest in and over the said portion of lot (sic) No. 1318, herein referred to as Lot No. 1318-C, in favor of Victor Garde as evidenced by a document of sale dated June 3, 1922, which was duly acknowledged and ratified before Mr. Jose Peralta, Notary Public, appearing as Doc. No. 64, Page No. 60, Book No. III, series of 1922, of the latter's Notarial Register, a xerox copy of said deed of sale is hereto attached as Annex 'B', and made part hereof. This document of sale was later on affirmed by David Abadiano, in a document dated September 30, 1939, and acknowledged on the same date before Mr. Jose Peralta, Notary Public, appearing as Doc. No. 128, Page No. 100, *Libro* XI, of the latter's Notarial Register, a xerox copy of which is hereto attached as Annex 'C', and made part hereof." (Complaint, records, pp. 2-3)

[29] Answer with Counterclaim, records, p. 29.

[30] Answer in Intervention, *id*. at 115.

This was testified to by Roberto Abadiano during the trial, thus:

Q: During the lifetime of your father, do you know if your father has ever sold to any party his share on Lot No. 1318?

A: He has not sold his share.[31]

These statements were enough to impugn the due execution of the document. While it is true that this Court had previously ruled that mere denials would not have sufficed to impeach the document, in this case, there was an effective specific denial as contemplated by law in accordance with our ruling that —

> defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either.[32]

It was error then for the RTC to have brushed aside this issue and then make so sweeping a conclusion in the face of such opposition. In light of this challenge to the very existence of the *Compra Y Venta*, the trial court should have first resolved the issue of the document's authenticity and due execution before deciding on its validity. Unfortunately, the CA did not even discuss this issue.

We are cognizant, however, that it is now too late in the day to remand the case to the trial court for the determination of the purported *Compra Y Venta*'s authenticity and due execution. Thus, we will resolve this very issue here and now in order to put an end to this protracted litigation.

There is no denying that TCT No. 31862 is still the subsisting title over the parcel of land in dispute. It is also a fact that the

---

[31] TSN, September 14, 1989, p. 8.

[32] *The Consolidated Bank and Trust Company v. Del Monte Motor Works, et al.,* G.R. No. 143338, July 29, 2005, 465 SCRA 117, 130, citing *Permanent Savings and Loan Bank v. Mariano Velarde,* 439 SCRA 1 (2004).

purported *Compra Y Venta* was not annotated on TCT No. 31862 until April 1982, shortly before the complaint was commenced, even though the deed was allegedly executed in 1922.

Considering that the action is one for quieting of title and respondents anchored their claim to the property on the disputed *Compra Y Venta*, we find it necessary to repeat that it was incumbent upon the trial court to have resolved first the issue of the document's due execution and authenticity, before determining its validity.

Rule 130, Section 3 of the Revised Rules of Court reads:

Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Respondents attached only a photocopy of the *Compra Y Venta* to their complaint. According to respondent Lolita Martir, the original of said document was in the office of the Register of Deeds. They allegedly tried to obtain a copy from that office but their request was refused. No other evidence but these bare assertions, however, was presented to prove that the original is indeed in the custody of the Register of Deeds or that respondents' due and diligent search for the same was unsuccessful.

The Rule states that when the original document is unavailable, has been lost or destroyed, or cannot be produced in court, the

offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[33]

In the case at bar, respondents failed to establish that the offer in evidence of the document was made in accordance with any of the exceptions allowed under the abovequoted rule, and yet, the trial court accepted the document as genuine and proceeded to determine its validity based on such assumption.

The trial court likewise brushed aside the apparent defect that the document presented contained the same notarial inscription as the Agreement on Partition. Indeed, the Deed of Partition and the *Compra Y Venta*, though executed on different days, were notarized on the same day, and both documents contained the signatures of the same witnesses and the same notarial inscription.

This notwithstanding, the court concluded, "Assuming this to be true, same could be considered an error which did not nullify, (sic) the Deed of Sale or *Compra Y Venta*. At most, the document would be a non-registrable, but valid document."[34]

We stress that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity.[35]

In this case, while it is true that the error in the notarial inscription would not have invalidated the sale — if indeed it took place — the same error would have meant that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.[36]

---

[33] Rule 130, Sec. 5.

[34] *Rollo*, p. 52.

[35] *Bautista v. Court of Appeals*, 479 Phil. 787, 795 (2004), citing *Fernandez v. Fernandez*, 363 SCRA 811, 829 (2001).

[36] See *Tigno, et al. v. Spouses Aquino, et al.*, G.R. No. 129416, November 25, 2004, 444 SCRA 61.

Accordingly, respondents not having proven the due execution and genuineness of the purported *Compra Y Venta*, the weight of evidence preponderates in favor of petitioner.

Next, we determine if petitioner is guilty of laches. On this issue, we rule in the negative.

Under the *Property Registration Decree*,[37] no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.[38] Indefeasibility and imprescriptibility are the cornerstones of land registration proceedings. Barring any mistake or use of fraud in the procurement of the title, owners may rest secure on their ownership and possession once their title is registered under the protective mantle of the Torrens system.[39]

Nonetheless, even if a Torrens title is indefeasible and imprescriptible,[40] the registered landowner may lose his right to recover the possession of his registered property by reason of laches.[41]

Laches has been defined as neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will

---

[37] Section 47, Presidential Decree (PD) No. 1529.

[38] Sec. 47, *id*.

[39] *Herce v. Municipality of Cabuyao, et al.*, G.R. No. 166645, November 11, 2005, 474 SCRA 797, 807, citing *Tichangco v. Enriquez*, 433 SCRA 324, 333-334 (2004).

[40] *Isabela Colleges, Inc. v. The Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000), citing *Reyes v. Court of Appeals*, 258 SCRA 651 (1996); *Dimayuga v. Court of Appeals*, 129 SCRA 110 (1984).

[41] *Id.*, citing *Catholic Bishop of Balanga v. Court of Appeals*, 264 SCRA 181 (1996); *De la Calzada-Cierras v. Court of Appeals*, 212 SCRA 390 (1992); *Claverias v. Quingco*, 207 SCRA 66 (1992); *Marcelino v. Court of Appeals*, 210 SCRA 444 (1992); *Republic v. Court of Appeals*, 204 SCRA 160 (1991); *Tambot v. Court of Appeals*, 181 SCRA 202 (1990); *Bergado v. Court of Appeals*, 173 SCRA 497 (1989); *Golloy v. Court of Appeals*, 173 SCRA 26 (1989); *Lola v. Court of Appeals*, 145 SCRA 439 (1986); *Miguel v. Catalino*, 26 SCRA 234 (1968); *Mejia de Lucas v. Gamponia*, 100 Phil. 277 (1956).

operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.[42]

The four basic elements of *laches* are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred.[43]

The reason for the rule is not simply the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court finds that the position of the parties will change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect.[44]

---

[42] *De Vera-Cruz, et al. v. Miguel*, G.R. No. 144103, August 31, 2005, 468 SCRA 506, 518.

[43] *Heirs of Dumaliang, et al. v. Serban, et al.*, G.R. No. 155133, February 21, 2007, 516 SCRA 343, 352, citing *Felix Gochan and Sons Realty Corporation v. Heirs of Baba*, G.R. No. 138945, August 19, 2003, 409 SCRA 306; see also *Miguel v. Catalino*, 135 Phil. 229 (1968) and *Claverias v. Quingco*, G.R. No. 77744, 6 March 1992, 207 SCRA 66; *Go Chi Gun, et al. v. Co Cho, et al.*, 96 Phil. 622, 637 (1954), citing 19 Am. Jur., 343-344.

[44] *Vda. de Cabrera, et al. v. Court of Appeals*, 335 Phil. 19, 34 (1997), citing *Mejia de Lucas v. Gampona*, 100 Phil. 277 (1956).

Though laches applies even to imprescriptible actions, its elements must be proved positively. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.[45]

Based on the foregoing, we hold that petitioner is not guilty of laches. The evidence on record does not support such finding.

Petitioner had reasonable ground to believe that the property, being still in the name of his predecessor in interest, continued to be theirs, especially considering that the annotation of the purported sale was done only in 1982. According to petitioner, his father had told him that his (the father's) inheritance was in the possession of their uncle, Amando Bañares who knew likewise that the property was theirs.

Thus, Roberto Abadiano testified:

Q: Before Amando Bañares died, did you know that your father is a part owner of Lot No. 1318?

A: Yes, Sir.

Q: And did you not complain to Amando Bañares that your father is a part owner of that lot?

A: No, Sir. We did not complain because he was our grandfather and when he dies, the property will go back to us.[46]

And herein petitioner testified:

Atty. Garaygay —

Q: Before the war who was occupying this lot which you claimed belonging (sic) to your father?

A: The uncle of my father, Amando Bañares, Sir.

Q: As a matter of fact, before and after the war and during the lifetime of Amando Bañares, he was the one in possession of Lot No. 1318?

---

[45] *Department of Education v. Oñate*, G.R. No. 161758, June 8, 2007, 524 SCRA 200, 216, citing *Felix Gochan and Sons Realty Corporation v. Heirs of Baba*, *supra* note 43.

[46] TSN, November 23, 1989, p. 5.

A: Yes, sir.

Q: What was the condition of the lot under the possession of the lot under the possession of Amando Bañares — was it under lease?

A: As far as I can remember, my father told me that his inheritance was with Amando Bañares, his uncle.[47]

From the testimonies of petitioner and the defendants during trial, it would appear that they were unaware of any of respondents' actions in relation to the property until the death of their grandfather, Amando Bañares. When they did find out that respondents were occupying the land, they immediately took action to occupy what they believed was still rightfully theirs.

On this point, petitioner testified, thus:

Q: When did you initiate the move to claim Lot No. 1318-B as your inheritance from your late father?

A: It was shortly after the death of Amando Bañares.

Q: Who were these, who initiated the move to claim Lot No. 1318-B?

A: I advised my brothers here in Kabankalan to take action to possess the land which was then occupied before by our (sic) great uncle, Amando Bañares.

Q: When was that, in what year, because we do not know when did your uncle (sic) die?

A: It was after the death of Amando Bañares sometime in 1973 or 1974.

Q: Why did it take you that long before you initiated the move to claim the inheritance?

A: Considering that relatives were involved and the fact we understand that our late parents revered our uncle so, we cautiously tried to take action shortly after his death, so as not to antagonize our relatives.

---

[47] *Id*. at 6.

Q: What did you do in order to claim your inheritance?

A: Now, after learning that it was being farmed by Lolita Martir, I advised my brothers here in Kabankalan to go to Bacolod City to seek the intercession of the Philippine Constabulary Commander in order to thresh out the matter in a way that there will be no hostility or adverse reaction.

Q: What other reactions did you take, if any?

A: Well, I told my brother that they have a confrontation in the Office of the PACLAP known as the Presidential Action Commission on Land Problems.

Q: Besides that confrontation at the PACLAP, what other action did you personally take as an heir of Lot No. 1318-B?

A: After that confrontation, I advised my brothers to occupy the land in question to farm it because it belongs to us.

Q: With respect to the Transfer Certificate of Title, what action, if any, did you undertake?

A: Well, we drew out a Declaration of Heirship and Adjudication and after it was approved by the Court, it was annotated at the back of the Transfer Certificate of Title No. T-31862 and we were given a co-owner's copy of the said title by the Register of Deeds.

x x x x x x x x x

Q: Mr. Witness, when did you and your co-owners executed (sic) this Declaration of Heirship and Adjudication over Lot 1318-B?

A: That was on July 17, 1976.

Q: Was that before or after the plaintiffs have filed this present case?

A: That was almost 6 or 7 years before this present case was filed.[48]

On the other hand, Roberto Abadiano testified:

---

[48] TSN, July 14, 1994, pp. 40-43.

Atty. Garaygay —

Q: Now, according to you, your father is the co-owner of Lot No. 1318. Prior to the death of your father, who was in possession of Lot No. 1318?

Witness —

A: What I know is it was Amando Bañares.

Q: You mean to say that when your father was still alive, it was Amando Bañares who was in possession of Lot No. 1318?

A: Yes, sir.

Q: And until when did you know that Amando Bañares has been in possession of Lot No. 1318?

A: Up to 1976 when he died.

Q: After his death in 1976, who was in possession of the said lot?

A: I made a verification in the Office of the Register of Deeds, and when I went to the said lot, it was vacant.

Q: When was that?

A: In 1976-1977, and I have it planted in 1978.[49]

That petitioner and his co-heirs waited until the death of Amando Bañares to try and occupy the land is understandable. They had to be careful about the actions they took, lest they sow dissent within the family. Furthermore, they knew that their parents revered Amando.[50]

The Court has recognized that this reaction cannot be characterized as such delay as would amount to laches, thus:

in determining whether a delay in seeking to enforce a right constitutes laches, the existence of a confidential relationship between the parties is an important circumstance for consideration, a delay under such circumstances not being so strictly regarded as where the parties are strangers to each other. The doctrine of laches is not strictly applied between near relatives, and the fact that parties are connected

[49] TSN, November 23, 1989, p. 4.

[50] *Rollo*, p. 13.

by ties of blood or marriage tends to excuse an otherwise unreasonable delay.[51]

In addition, several other factors militate against the finding of laches on the part of the petitioner.

When the Original Certificate of Title was reconstituted on February 15, 1962, no annotation therein was made of the *Compra Y Venta* or of the Deed of Sale between Ramon Abadiano and Victor Garde. Only the Agreement of Partition, the Confirmation by David Abadiano, and the sale from Demetrio to Leopoldo Bañares were annotated therein.[52] Neither does the Deed of Sale of Demetrio's share in favor of Leopoldo, executed in 1957, mention that the property belonged to anyone other than the parties to the Deed of Partition.[53]

Likewise, Transfer Certificate of Title No. T-31862, which was issued in 1962 pursuant to an Order of the Kabankalan CFI, was issued in the names of Leopoldo Bañares, Amando Bañares, and Ramon and David Abadiano. Even at the time of the issuance of said TCT, there was no annotation of the alleged sale to Victor Garde, which according to respondents took place in 1922.

If respondents' contention were true, the TCT should not have been issued in April 1962 in the name of Ramon and David Abadiano, but in the name of Victor Garde or Jose Garde — who by then had supposedly acquired the property by virtue of the Declaration of Heirship and Deed of Sale executed on December 29, 1961.[54] As it is, neither respondents nor any of their predecessors in interest participated in any of the proceedings for the issuance of the OCT, the reconstituted OCT, or the TCT. The petitioner's testimony on the matter is revealing:

---

[51] *Pilapil, et al. v. Heirs of Briones, et al.*, G.R. No. 150175, March 10, 2006, 484 SCRA 308, 316-317, citing *Gallardo v. Intermediate Appellate Court*, 155 SCRA 248 (1987); *Sotto v. Teves, et al.*, 175 Phil 343, 371.

[52] Exhibit "1", folder of exhibits for intervenor, p. 2.

[53] Exhibit "1-C-1", *id.* at 17.

[54] Records, pp. 15-17.

Q: Based on your investigation, did you find records of the proceedings of the reconstitution of title of Lot 1318 or any evidence as to the participation of the plaintiffs in this Reconstitution Petition?

A: Based on the existing records, they did not participate.

Q: How about in the Reconstitution of Original Certificate of Title No. (sic) did the plaintiffs participate therein?

A: They did not also.

Q: How about in the issuance of the new Transfer Certificate of Title, did the plaintiffs participate herein?

A: No, sir.[55]

Again, the TCT bears out the fact that the purported *Compra Y Venta* to Victor Garde was annotated thereon only on April 23, 1982. On the other hand, several entries made in 1981 evince that petitioner and his co-heirs took steps after Amando's death to assert their rights over the property.[56]

In 1976, the heirs of David Abadiano executed a Special Power of Attorney in favor of Roberto Abadiano giving the latter authority to act, sue, and/or represent them in any suit or action for recovery of possession or of whatever kind or nature.[57] For their part, the heirs of Ramon Abadiano executed a Declaration of Heirship and Adjudication over the part of Lot No. 1318 pertaining to their predecessor.[58]

Ranged against these positive steps, respondents only have their bare assertions to support their claim that they indeed had possession of the land through their predecessors in interest, which are insufficient to overcome the testimony that it was Amando Bañares — and not Victor Garde — who had possession

---

[55] TSN, July 14, 1994, p. 34.

[56] Exhibits "2", "2-A", "2-B", "2-C", "2-D", "2-E", and "2-F", folder of exhibits for intervenor, p. 21.

[57] Exhibit "2-B-1", folder of exhibits for intervenor, pp. 26-27.

[58] Exhibit "2-C-1", *id.* at 28-29.

of the property during the former's lifetime, or that after Amando's death, the lot remained unoccupied.

In sum, we find that petitioner is not guilty of such neglect or inaction as would bar his claim to the property in question. In contrast, it is most telling that respondents, who are claiming to have been in possession of the property by virtue of an alleged duly constituted sale for almost 60 years, have themselves failed within that long period to have the same property transferred in their name or even only to have the sale annotated on the title of the property.

Finally, we come to the issue of damages. Petitioner prays that respondents be made to pay actual damages of not less that ₱30,000.00 plus rentals on the property from the time of the latter's occupation, moral damages amounting to ₱100,000.00, and exemplary damages, as well as attorney's fees.

The record shows that petitioner testified on the prevailing rate of rentals on the subject property from the time of Amando Bañares' death in 1976 until the time of the trial. According to petitioner, the rental rate from 1976 until 1985 was ₱3,000.00 per hectare, while from 1985 until the time of his testimony in 1994, the rental rate was ₱5,000.00 per hectare. We thus rule that the actual damages that may be awarded shall be based only on these rates.[59]

Considering, however, that petitioner's co-heirs (defendants Roberto Abandiano, *et al*.) were able to enter the property and harvest the sugarcane therein in 1981 and, thereafter, the land remained unoccupied, the rent must be reckoned only from the time respondents actually occupied the land until March 1981.

The claims for moral damages must be anchored on a definite showing that the claiming party actually experienced emotional and mental sufferings.[60] In this case, we find that petitioner's testimony that he suffered from sleepless nights from worrying

---

[59] TSN, July 14, 1994, p. 46.

[60] *Trinidad v. Acapulco* G.R. No. 147477, June 27, 2006, 493 SCRA 179, 193, citing *Quezon City Government v. Dacara*, 460 SCRA 243 (2005).

about this case and considering the great distance he had to travel from his home in Tacloban to see the case through are enough bases to award him moral damages. With the award of moral damages, exemplary damages are likewise in order.[61]

Attorney's fees are recoverable when exemplary damages are awarded, or when the court deems it just and equitable. The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court.[62] Given the circumstances of this case, we grant the prayer for attorney's fees.

WHEREFORE, the foregoing premises considered, the Petition is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 51679 are *REVERSED AND SET ASIDE*. A new one is entered:

(1) reversing the Decision of the Regional Trial Court of Kabankalan, Negros Occidental in Civil Case No. 1331;

(2) declaring the heirs of Ramon and David Abadiano as the lawful owners of Lot No. 1318-B, a portion of Lot No. 1318 covered by Transfer Certificate of Title No. T-31862, Kabankalan Cadastre, Negros Occidental; and

(3) ordering respondents to pay petitioner and his co-heirs rentals at the rate of ₱3,000.00 per hectare per year, from the time of actual occupation of the land in 1976 until March 1981, moral damages in the amount of ₱100,00.00, exemplary damages in the amount of ₱30,000.00, and attorney's fees in the amount of ₱10,000.00.

SO ORDERED.

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

---

[61] CIVIL CODE, Art. 2208.

[62] *Pilipinas Shell Petroleum Corporation v. John Bordman Limited of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 175. (Citations omitted).

THIRD DIVISION

[G.R. No. 158144. July 31, 2008]

ST. MARY'S FARM, INC., *petitioner, vs.* **PRIMA REAL PROPERTIES, INC., RODOLFO A. AGANA, JR., and THE REGISTER OF DEEDS OF LAS PIÑAS, METRO MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS NOT PRESENT IN CASE AT BAR. — A cursory reading of the issues reveals that these are factual matters which are not within the province of the Court to look into, save only in exceptional circumstances which are not present in the case at bar. Well settled is the rule that in petitions for review on *certiorari* under Rule 45, only questions of law must be raised. As a matter of procedure, the Court defers and accords finality to the factual findings of trial courts, especially when, as in the case at bar, such findings are affirmed by the appellate court. This factual determination, as a matter of long and sound appellate practice, deserves great weight and shall not be disturbed on appeal. It is not the function of the Court to analyze and weigh all over again the evidence or premises supportive of the factual holding of the lower courts.

2. ID.; EVIDENCE; BURDEN OF PROOF; LIES WITH THE PARTY MAKING THE ALLEGATION. — Thus, in the instant case, it cannot readily be concluded that a particular signature appearing in those documents is not genuine for lack of proper identification and a more accurate comparison of signatures. Mere allegation of forgery is not evidence and the burden of proof lies in the party making the allegation. Unfortunately, in the case at bar, the petitioner failed to discharge this burden.

3. ID.; ID.; NOTARIZATION; NON-APPEARANCE OF A PARTY BEFORE NOTARY PUBLIC; EFFECT. — Further challenging the due execution of the board resolution bearing the Secretary's Certification, petitioner wants us to consider the same as inadmissible on the ground that Atty. Agcaoili did

not appear before a notary public for notarization. We do not agree, because in the past, we have already held that the non-appearance of the party before the notary public who notarized the deed does not necessarily nullify or render the parties' transaction void *ab initio*. However, the non-appearance of the party exposes the notary public to administrative liability which warrants sanction by the Court.

4. ID.; ID.; ID.; ID.; NOT ENOUGH TO OVERCOME PRESUMPTION OF TRUTHFULNESS OF STATEMENTS CONTAINED IN BOARD RESOLUTION. — This fact notwithstanding, we agree with the respondent court that it is not enough to overcome the presumption of the truthfulness of the statements contained in the board resolution. To overcome the presumption, there must be sufficient, clear and convincing evidence as to exclude all reasonable controversy as to the falsity of the certificate. In the absence of such proof, the document must be upheld. Notarization converts a private document into a public document, making it admissible in court without further proof of its authenticity.

5. CIVIL LAW; SPECIAL CONTRACTS; SALES; BUYER OF PROPERTY IN GOOD FAITH, CONSTRUED. — Undeniably then, the respondent is an innocent purchaser for value in good faith. Our pronouncement in *Bautista v. Silva* is instructive: A buyer for value in good faith is one who buys property of another, without notice that some other person has a right to, or interest in such property and pays full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. ***He buys the property with the well-founded belief that the person from whom he receives the thing had title to the property and capacity to convey it.*** To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property. He need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title. Such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first*, the seller is the registered owner of the land; *second*, the latter is in possession thereof; and *third*, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or

restriction in the title of the seller or in his capacity to convey title to the property.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; AGANA'S ASSERTION THAT HE ACTED SOLELY AND WITHOUT PROPER AUTHORITY FROM THE CORPORATION WHICH WAS RAISED FOR THE FIRST TIME IN THE SUPREME COURT AND ONLY AFTER EIGHT YEARS FROM START OF THE CASE CANNOT BE GIVEN CREDENCE. — Unfortunately, the Court cannot give weight to this magnanimous gesture of Agana; neither will the Court lend credence to Agana's assertion that he acted solely and without proper authority from the corporation, inasmuch as it was raised for the very first time in this Court and only after 8 years from the inception of the case.

7. ID.; EVIDENCE; JUDICIAL ADMISSION; RETRACTION MERELY AN AFTERTHOUGHT. — In all the pleadings filed by respondent Agana in court, he was steadfast in his position that he had authority to sell the subject property. A judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made. In the instant case, there is no proof of these exceptional circumstances. Clearly, the retraction was merely an afterthought on the part of respondent Agana with the intention to end the rift in the family corporation.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda for petitioner.

*Fondevilla Jasarino Young Rondario & Librojo Law Offi*ces for R. Agana.

Martinez Vergara Gonzales & Serano for Prima Real Properties, Inc.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review of the decision[1] of the Court of Appeals (CA) affirming *in toto* the decision[2] of the Regional Trial Court (RTC), Branch 254, Las Piñas City, which dismissed for lack of merit the complaint for annulment of sale.

The factual antecedents of the case, as narrated by the RTC, are as follows:

> [I]t appears that herein plaintiff was the registered owner of an originally twenty-five thousand five hundred ninety-eight (25,598) square meters of land situated at Bo. Pugad Lawin, Las Piñas City under Transfer Certificate of Title No. S-1648 (11521-A) of the Registry of Deeds of Las Piñas City.
>
> In compliance with a final court decision in Civil Case No. 87-42915 of the Regional Trial Court, Branch XL of Manila, plaintiff passed and approved on 27 June 1988 a board resolution authorizing defendant Rodolfo A. Agana to cede to T.S. Cruz Subdivision four thousand (4,000) square meters of the land covered by the aforecited Transfer Certificate of Title No. S-1648 (11521-A). Allegedly, after the consummation of this transaction, defendant Rodolfo A. Agana did not return to plaintiff the borrowed aforementioned title and[,] instead, allegedly forged a board resolution of the plaintiff corporation supposedly to the effect that plaintiff had authorized him to sell the remaining twenty-one thousand five hundred ninety-eight (21,598) square meters of the subject property. A series of transactions thereafter took place between defendant Rodolfo A. Agana and defendant Prima Real Properties, Inc. (Prima) which transactions culminated to the signing on 5 September 1988 of an absolute deed of sale transferring the ownership of the subject land from herein plaintiff to herein defendant Prima. After the consummation of the sale, defendant Prima effected the cancellation of Transfer Certificate of Title No. S-1648 (11521-A) in the name of plaintiff and in lieu

---

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Buenaventura J. Guerrero and Teodoro P. Regino, concurring; *rollo*, pp. 54-64.

[2] Penned by Judge Manuel B. Fernandez; *id*. at 115-127.

thereof another Transfer Certificate of Title No. T-6175 in the name of defendant Prima was issued by defendant Alejandro R. Villanueva in his capacity as Register of Deeds of Las Piñas City.

Subsequent developments had it that on 6 October 1988, defendant Prima duly purchased from T.S. Cruz Subdivision the aforementioned four thousand (4,000) square meters portion of the subject property which development thereafter led to the cancellation of the aforementioned Transfer Certificate of Title No. T-6175 and the issuance by the Registry of Deeds of Las Piñas City of two separate titles both in the name of defendant Prima, Transfer Certificate of Title No. 7863 covering the aforementioned four thousand square meters and Transfer Certificate of Title No. T-7864 covering the herein twenty-one thousand five hundred ninety-eighty (sic) (21,598) square meter subject property.

In its complaint which was amended twice, the second amendment even needed the intervention of the Court of Appeals in a petition for *certiorari* and *mandamus* after the same was denied admission by Hon. N.C. Perello, Presiding Judge of the then Assisting Court of Makati, [Muntinlupa], Metro Manila, herein plaintiff alleged *inter alia* that the authorization certified to by Antonio V. Agcaoili, Corporate Secretary of the plaintiff and used by defendant Rodolfo A. Agana in selling the subject property to defendant Prima was a forgery as the board of directors of the plaintiff never enacted a resolution authorizing herein defendant Rodolfo A. Agana to sell herein subject property to defendant Prima or to anyone else for that matter. Plaintiff further claimed that defendant Prima in collusion with defendant Rodolfo A. Agana acted maliciously and in bad faith in relying on the forged authority without taking any step to verify the same with the plaintiff as owner of the subject property. According to plaintiff, the deed of absolute sale entered into between defendants Prima and Rodolfo A. Agana being the result of fraudulent transaction was void thereby, among others, causing damage to the plaintiff. For canceling Transfer Certificate of Title No. S-1648 (11521-A) knowing fully well that the authorization to sell [to] defendant Rodolfo A. Agana was a forgery, defendant Alejandro R. Villanueva was likewise made liable for damages.

On the other hand, defendant Prima separately with defendant Rodolfo A. Agana in their respective answers, sought and insisted constantly on the dismissal of the complaint based solidly on the ground that Venice B. Agana and Ma. Natividad A. Villacorta who filed in behalf of the plaintiff the original complaint and the amended

and the second amended complaints as well, respectively, lacked legal capacity to sue because they were not authorized therefor by the board of directors of the plaintiff. Furthermore, defendant Prima argued that it acted in good faith when it relied solely on the face of the purported authorization of defendant Rodolfo A. Agana and entered into the deed of absolute sale and paid in full the purchase price of PhP2,567,760.00 of the subject property. This fact, according to defendant Prima, made it a buyer in good faith and for value. To cap its argument, defendant Prima in adopting the defense of defendant Rodolfo A. Agana asserted that even assuming that the authorization of defendant Rodolfo A. Agana was forged when plaintiff, through its President, Marcelino A. Agana, Jr. (brother of Rodolfo) accepted/ received part of the aforestated purchase price knowing fully well the same to be the proceeds of the sale of the subject property, plaintiff has been precluded as it is now estopped from asking for rescission of the deed of absolute sale and reconveyance of the subject property.[3]

After due hearing, the trial court rendered judgment on April 7, 2000, dismissing the complaint for annulment of sale with damages filed by the petitioner.[4]

The trial court found that the respondent was a buyer in good faith and for value, relying on the authority of Rodolfo A. Agana to sell the property in behalf of the petitioner company, as evidenced by a notarized board resolution. As such, the trial court ruled that the petitioner was bound by the acts of its agent and must necessarily bear whatever damage may have been caused by this alleged breach of trust.

On appeal, the CA affirmed *in toto*.

Thus, petitioner filed the instant petition raising the following errors:

I

The Court of Appeals gravely erred in ruling that Respondent Agana was duly authorized by Petitioner under the Certification dated June

---

[3] *Rollo*, pp. 115-118.

[4] *Id*. at 115-127.

30, 1988 (Exhibits "D" and "3") to enter into the sale of the subject property with Respondent Prima Real.

(A) There is no proof of the Certification's authenticity and due execution;

(B) There is clear and convincing evidence that the Certification was forged.

(C) Even assuming that the Certification was authentic and duly executed, it was not sufficient in form and by its terms to authorize Respondent Agana to sell the subject property or receive payment on behalf of Petitioner.

II

The Court of Appeals gravely erred in not holding that Respondent Prima Real was the author of its own damage by not making reasonable and prudent inquiries into the fact, nature and extent of Respondent Agana's authority, and by causing the issuance of checks in the name of Respondent Agana.

The petition must fail.

A cursory reading of the issues reveals that these are factual matters which are not within the province of the Court to look into, save only in exceptional circumstances which are not present in the case at bar. Well settled is the rule that in petitions for review on *certiorari* under Rule 45, only questions of law must be raised.[5] As a matter of procedure, the Court defers and accords finality to the factual findings of trial courts, especially when, as in the case at bar, such findings are affirmed by the appellate court. This factual determination, as a matter of long and sound appellate practice, deserves great weight and shall not be disturbed on appeal. It is not the function of the Court to analyze and weigh all over again the evidence or premises supportive of the factual holding of the lower courts.[6]

---

[5] *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116.

[6] *Tapuroc v. Loquellano Vda. de Mende*, G.R. No. 152007, January 22, 2007, 512 SCRA 97.

Petitioner insists that "the sale of the realty entered into between respondent Agana, purportedly on behalf of the petitioner, and respondent Prima is null and void for lack of authority on the part of respondent Agana to sell the property."[7] The board resolution allegedly granting Rodolfo Agana the authority to sell in behalf of the company, as certified by Corporate Secretary Atty. Antonio V. Agcaoili, is alleged to be a forgery. Ma. Natividad A. Villacorta, who served as assistant to Marcelino A. Agana, Jr., the President of St. Mary's Farm, Inc., in 1988 testified that the board of directors did not hold any meeting on June 27, 1988; that, in fact, the signature of Atty. Antonio Agcaoili was not genuine; and that said document was merely presented to the notary public for notarization without Atty. Agcaoili appearing before him.

Despite this insistence, we find no cogent reason to deviate from the findings and conclusions of the respondent court affirming those of the trial court on this matter. Anent the forged signature of Atty. Agcaoili, the CA did not err in not giving evidentiary weight to the findings of the Document Examiner of the National Bureau of Investigation (NBI) on the ground that the findings were not really conclusive. In the first place, the procedure for the investigation of questionable handwriting was not properly followed. There is nothing on record that will conclusively show that the alleged standard sample signatures of Atty. Antonio Agcaoili, which were submitted to the NBI and made the basis of comparison, were the genuine signatures of the same Atty. Antonio Agcaoili. Moreover, the examiner testified that it was possible to have variations in the standard signatures of Atty. Agcaoili, caused by certain factors such as passage of time, pressure and physical condition of the writer which may have decisive influences on his handwriting's characteristics.[8] Thus, in the instant case, it cannot readily be concluded that a particular signature appearing in those documents is not genuine for lack of proper identification and a more accurate comparison of signatures. Mere allegation of forgery is not evidence and the

---

[7] *Rollo*, p. 23.

[8] *Id*. at 58-60.

burden of proof lies in the party making the allegation.[9] Unfortunately, in the case at bar, the petitioner failed to discharge this burden.

Further challenging the due execution of the board resolution bearing the Secretary's Certification, petitioner wants us to consider the same as inadmissible on the ground that Atty. Agcaoili did not appear before a notary public for notarization. We do not agree, because in the past, we have already held that the non-appearance of the party before the notary public who notarized the deed does not necessarily nullify or render the parties' transaction void *ab initio*.[10] However, the non-appearance of the party exposes the notary public to administrative liability which warrants sanction by the Court. This fact notwithstanding, we agree with the respondent court that it is not enough to overcome the presumption of the truthfulness of the statements contained in the board resolution. To overcome the presumption, there must be sufficient, clear and convincing evidence as to exclude all reasonable controversy as to the falsity of the certificate.[11] In the absence of such proof, the document must be upheld. Notarization converts a private document into a public document, making it admissible in court without further proof of its authenticity.[12]

On the basis of this notarized board resolution, respondent had every reason to rely on Rodolfo Agana's authority to sell the subject property. Undeniably then, the respondent is an innocent purchaser for value in good faith. Our pronouncement in *Bautista v. Silva*[13] is instructive:

> A buyer for value in good faith is one who buys property of another, without notice that some other person has a right to, or interest in such property and pays full and fair price for the same, at the time

---

[9] *Lingan v. Calubaquib*, A.C. No. 5377, June 15, 2006, 490 SCRA 526.

[10] *Mallari v. Alsol*, G.R. No. 150866, March 6, 2006, 484 SCRA 148.

[11] *Rollo*, p. 60.

[12] *Protacio v. Mendoza*, 443 Phil. 12, 20 (2003).

[13] G.R. No. 157434, September 19, 2006, 502 SCRA 334.

of such purchase, or before he has notice of the claim or interest of some other persons in the property. ***He buys the property with the well-founded belief that the person from whom he receives the thing had title to the property and capacity to convey it.***

To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property. He need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title. Such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first*, the seller is the registered owner of the land; *second*, the latter is in possession thereof; and *third*, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.[14]

All the conditions enumerated in the aforementioned case are present in the case at bar, enough for us to consider Prima as a buyer in good faith. Prima Real Properties, Inc. is a company engaged in the buying and selling of real properties. As borne out by the records, respondent exerted efforts to verify the true background of the subject property. Rodolfo Agana presented to respondent the (1) notarized board resolution which stated that at a special meeting held on June 27, 1988, the board of directors authorized Mr. Rodolfo A. Agana, Treasurer, to sell the subject property covered by Transfer Certificate of Title (TCT) No. S-1648;[15] (2) a separate Certification by the petitioner's president, Marcelino A. Agana, Jr., authorizing its Treasurer, Rodolfo Agana, to sell said property;[16] and, (3) TCT No. T-1648 of the subject property. Convinced that Rodolfo Agana had the authority to sell on behalf of the company after being presented all these documents, the sale between the parties was thereby consummated. A deed of sale was executed on September 5, 1988[17] and the

---

[14] *Id.* at 346-347. (Emphasis supplied.)

[15] Records, p. 168.

[16] *Id.* at 169.

[17] *Id.* at 171.

full consideration of ₱2,567,760.00 for the subject property was paid.[18]

It is of no moment that the checks were made payable to Rodolfo Agana and not to the company which, according to the petitioner, should have alerted the respondent to inquire further into the extent of Agana's authority to transfer the subject property. This was no longer necessary considering that respondent had every reason to rely on Rodolfo Agana's authority to sell, evidenced by the notarized Certification. As explained in the *Bautista case:*

> When the document under scrutiny is a special power of attorney that is **duly notarized,** we know it to be a public document where the notarial acknowledgment is *prima facie* evidence of the fact of its due execution. A buyer presented with such a document would have no choice between knowing and finding out whether a forger lurks beneath the signature on it. The notarial acknowledgment has removed that choice from him and replaced it with a presumption sanctioned by law that the affiant appeared before the notary public and acknowledged that he executed the document, understood its import and signed it. In reality, he is deprived of such choice not because he is incapable of knowing and finding out but because, under our notarial system, he has been given the luxury of merely relying on the presumption of regularity of a duly notarized SPA. And he cannot be faulted for that because it is precisely that fiction of regularity which holds together commercial transactions across borders and time.
>
> In sum, **all things being equal,** a person dealing with a seller who has [in his] possession title to the property but whose capacity to sell is restricted, qualifies as a buyer in good faith if he proves that he inquired into the title of the seller as well as into the latter's capacity to sell; and that in his inquiry, he relied on the notarial acknowledgment found in the seller's **duly notarized** special power of attorney. He need not prove anything more for it is already the function of the notarial acknowledgment to establish the appearance of the parties to the document, its due execution and authenticity.[19]

---

[18] *Id.* at 173.

[19] *Bautista v. Silva, supra* note 13, at 350-351.

Aside from the pertinent documents presented, respondent also relied on the confirmation and certification of the Register of Deeds of Las Piñas City and Mr. Timoteo S. Cruz, owner of the land likewise sold by Rodolfo Agana for the petitioner, with similar authorization by the petitioner and signed by the corporate secretary Atty. Agcaoili. Agana acted as petitioner's authorized agent and had full authority to bind the company in that transaction with Cruz.

Contrary to the allegations of the petitioner that respondent Agana's authority was only limited to negotiate and not to sell the subject property, suffice it to state that the board resolution further averred that he was "authorized and empowered to sign any and all documents, instruments, papers or writings which may be required and necessary for this purpose to bind the Corporation in this undertaking."[20] The certification of the President, Marcelino Agana, Jr. also attests to this fact. With this notarized board resolution, respondent Agana, undeniably, had the authority to cede the subject property, carrying with it all the concomitant powers necessary to implement said transaction. On the strength of the deed of absolute sale executed pursuant to such authority, title over the land in petitioner's name was cancelled and a new certificate of title — TCT No. T-6175[21] — was already issued in the name of Prima Real Properties, Inc.

Thus, it is too late in the day to have the sale voided, notwithstanding the retraction made by Rodolfo Agana in his Comment[22] on the Petition filed with this Court. Therein, he admits that he acted solely and without proper authority of the corporation. Agana states that he wishes to end once and for all the rift that had occurred in the corporation; and in order to buy peace for all the parties and for himself, he is willing to return the money paid by Prima so that ownership of the property

---

[20] *Rollo*, p. 75.

[21] Records, p. 164.

[22] *Id*. at 237-243.

can be returned to the petitioner. In light of this admission that Agana had no authority, petitioner posits that there is justifiable reason for the Court to re-visit or evaluate the facts of the case anew.

Unfortunately, the Court cannot give weight to this magnanimous gesture of Agana; neither will the Court lend credence to Agana's assertion that he acted solely and without proper authority from the corporation, inasmuch as it was raised for the very first time in this Court and only after 8 years from the inception of the case. In all the pleadings filed by respondent Agana in court, he was steadfast in his position that he had authority to sell the subject property. A judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[23] In the instant case, there is no proof of these exceptional circumstances. Clearly, the retraction was merely an afterthought on the part of respondent Agana with the intention to end the rift in the family corporation.

Considering all the foregoing, it cannot be gainsaid that respondent Prima is an innocent purchaser in good faith and for value.

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

SO ORDERED.

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

---

[23] *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien,* G.R. No. 155508, September 11, 2006, 501 SCRA 405, 414-415.

THIRD DIVISION

[G.R. No. 159323. July 31, 2008]

COCA-COLA BOTTLERS (PHILS.), INC. and ERIC MONTINOLA, *petitioners, vs.* **SOCIAL SECURITY COMMISSION and DR. DEAN CLIMACO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PREJUDICIAL QUESTION; CONSTRUED. — The rule is that **there is prejudicial question when (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.** It comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed. This is so because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

2. ID.; ID.; ID.; CAN NOT BE APPLIED BY ANALOGY. — Neither can the doctrine of prejudicial question be applied by analogy. The issue in the case filed by Dr. Climaco with the SSC involves the question of whether or not he is an employee of Coca-Cola Bottlers (Phils.), Inc. and subject to the compulsory coverage of the Social Security System. On the contrary, the cases filed by Dr. Climaco before the NLRC involved different issues. In his first complaint, Dr. Climaco sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits. The second complaint was for illegal dismissal, with prayer for reinstatement to his former position as company physician of the company's Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages. Thus, the issues in the NLRC cases are not determinative of whether or not the SSC should proceed. It is settled that the question

claimed to be prejudicial in nature must be determinative of the case before the court.

3. ID.; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT. — Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes. It is proscribed because it unnecessarily burdens the courts with heavy caseloads. It also unduly taxes the manpower and financial resources of the judiciary. It mocks the judicial processes, thus, affecting the efficient administration of justice. The grave evil sought to be avoided by the rule against forum shopping is the rendition by two (2) competent tribunals of two (2) separate and contradictory decisions. Unscrupulous litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. There is forum shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court. In short, **forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.**

4. ID.; ID.; ID.; *LITIS PENDENTIA*; ELEMENTS. — For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

5. ID.; ID.; ID.; *RES JUDICATA*; ELEMENTS. — There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action.

6. ID.; ID.; "ANOTHER ACTION." — In *Solancio v. Ramos*, the issue centered on whether the pending administrative case before the Bureau of Lands is "another action," which would justify

the dismissal of the complaint of plaintiff against defendants before the then Court of First Instance (now RTC) of Cagayan. Ruling in the negative, the Court noted that "both parties as well as the trial court have missed the extent or meaning of the ground of the motion to dismiss as contemplated under the Rules of Court." Mr. Justice Regala, who wrote the opinion of the Court, explained the phrase "another action" in this wise: This is not what is contemplated under the law because under Section 1(d), Rule 16 (formerly Rule 8) of the Rules of Court, [now Rule 1, Section 16(e) of the Rules of Court, *supra*] one of the grounds for the dismissal of an action is that "there is another action pending between the same parties for the same cause." Note that the Rule uses the phrase "another action." This phrase should be construed in line with Section 1 of Rule 2, which defines the word action, thus — "Action means an ordinary suit *in a court of justice*, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding."

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Villamor Torrecampo Ymballa & Villamor for private respondent.
Commission Legal Staff (SSS) for public respondent.

D E C I S I O N

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

WE are confronted with triple remedial issues on prejudicial question, forum shopping, and *litis pendentia*.

We review on *certiorari* the Decision[1] of the Court of Appeals (CA) upholding the order of the Social Security Commission

[1] *Rollo*, pp. 24-36. CA-G.R. SP No. 44031 dated March 15, 2002. Penned by Associate Justice Godardo Jacinto, with Associate Justices Eloy R. Bello, Jr. and Josefina Guevarra-Salonga, concurring.

(SSC),[2] denying petitioners' motion to dismiss respondent Climaco's petition for compulsory coverage with the Social Security System (SSS).

The Facts

Petitioner Coca-Cola Bottlers (Phils.), Inc. is a corporation engaged in the manufacture and sale of softdrink beverages.[3] Co-petitioner Eric Montinola was the general manager of its plant in Bacolod City.[4] Respondent Dr. Dean Climaco was a former retainer physician at the company's plant in Bacolod City.[5]

In 1988, petitioner company and Dr. Climaco entered into a Retainer Agreement[6] for one year, with a monthly compensation of ₱3,800.00,[7] where he "may charge professional fees for hospital services rendered in line with his specialization."[8] The agreement further provided that "either party may terminate the contract upon giving thirty (30)-day written notice to the other."[9] In consideration of the retainer's fee, Dr. Climaco "agrees to perform the duties and obligations"[10] enumerated in the Comprehensive Medical Plan,[11] which was attached and made an integral part of the agreement.

Explicit in the contract, however, is the provision that no employee-employer relationship shall exist between the company

---

[2] SSC Case No. 3-14335-95, entitled "*Dr. Dean Climaco v. Coca-Cola Bottlers Philippines, Inc., Eric Montinola, General Manager, and Social Security System*."

[3] *Rollo,* p. 4.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 68-69.

[7] *Id.* at 68.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 70-71.

and Dr. Climaco while the contract is in effect.[12] In case of its termination, Dr. Climaco "shall be entitled only to such retainer fee as may be due him at the time of termination."[13]

Dr. Climaco continuously served as the company physician, performing all the duties stipulated in the Retainer Agreement and the Comprehensive Medical Plan. By 1992, his salary was increased to ₱7,500.00 per month.[14]

Meantime, Dr. Climaco inquired with the Department of Labor and Employment and the SSS whether he was an employee of the company. Both agencies replied in the affirmative.[15] As a result, Dr. Climaco filed a complaint[16] before the National Labor Relations Commission (NLRC), Bacolod City. In his complaint, he sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[17]

During the pendency of the complaint, the company terminated its Retainer Agreement with Dr. Climaco. Thus, Dr. Climaco filed another complaint[18] for illegal dismissal against the company before the NLRC Bacolod City. He asked that he be reinstated to his former position as company physician of its Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages.[19]

The Labor Arbiter, in each of the complaints, ruled in favor of petitioner company.[20] The first complaint was dismissed after

---

[12] *Id.* at 69.

[13] *Id.*

[14] *Id.* at 26.

[15] *Id.* at 74, 77.

[16] NLRC RAB VI Case No. 06-02-10138-94.

[17] *Rollo,* pp. 107-119.

[18] NLRC RAB VI Case No. 06-04-10177-95.

[19] *Rollo,* pp. 120-123.

[20] *Id.* at 185-193, 195-196.

Labor Arbiter Jesus N. Rodriguez, Jr. found that the company did not have the power of control over Dr. Climaco's performance of his duties and responsibilities. The validity of the Retainer Agreement was also recognized. Labor Arbiter Benjamin Pelaez likewise dismissed the second complaint in view of the dismissal of the first complaint.

On appeal, the NLRC, Fourth Division, Cebu City, affirmed the Arbiter disposition.[21] On petition for review before the CA, the NLRC ruling was reversed.[22] The appellate court ruled that using the four-fold test, an employer-employee relationship existed between the company and Dr. Climaco. Petitioners elevated the case through a petition for review on *certiorari*[23] before this Court.

Meantime, on November 9, 1994, while the NLRC cases were pending, Dr. Climaco filed with the SSC in Bacolod City, a petition[24] praying, among others, that petitioner Coca-Cola Bottlers (Phils.), Inc. be ordered to report him for compulsory social security coverage.

On April 12, 1995, petitioners moved for the dismissal of the petition on the ground of lack of jurisdiction. They argued that there is no employer-employee relationship between the company and Dr. Climaco; and that his services were engaged by virtue of a Retainer Agreement.[25]

Dr. Climaco opposed the motion.[26] According to Dr. Climaco, "[t]he fact that the petitioner [*i.e.*, respondent Dr. Climaco] does not enjoy the other benefits of the company is a question that is being raised by the petitioner in his cases filed with the

---

[21] *Id.* at 198-204, 206-210.

[22] *Id.* at 212-224.

[23] *Id.* at 150-183. G.R. No. 146881.

[24] *Id.* at 65-67.

[25] *Id.* at 78-88.

[26] *Id.* at 91-95.

National Labor Relations Commission (NLRC), Bacolod City, against the respondent [*i.e.*, petitioner company]."[27]

On July 24, 1995, the SSC issued an order stating among others, that the resolution of petitioner company's motion to dismiss is held in abeyance "pending reception of evidence of the parties."[28]

In view of the statements of Dr. Climaco in his opposition to the company's motion to dismiss, petitioners again, on March 1, 1996, moved for the dismissal of Dr. Climaco's complaint, this time on the grounds of forum shopping and *litis pendentia*.[29]

SSC and CA Dispositions

On January 17, 1997, the SSC denied petitioners' motion to dismiss, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, the respondents' Motion to Dismiss is hereby denied for lack of merit.

Accordingly, let this case be remanded to SSS Bacolod Branch Office for reception of evidence of the parties pursuant to the Order dated July 24, 1995.

SO ORDERED.[30]

Petitioners' motion for reconsideration[31] received the same fate.[32]

On April 29, 1997, the company filed a petition for *certiorari* before the CA. On March 15, 2002, the CA dismissed the petition, with a *fallo* reading:

WHEREFORE**,** under the premises, the Court holds that public respondent Social Security Commission did not act with grave abuse

---

[27] *Id*. at 93. (Underscoring supplied.)

[28] *Id*. at 97.

[29] *Id*. at 100-106.

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

[31] *Id*. at 144-149.

[32] *Id*. at 64.

of discretion in issuing the disputed orders, and the herein petition is therefore DISMISSED for want of merit.

SO ORDERED.[33]

Hence, the present recourse.

Issues

Petitioners raise the following issues for Our consideration:

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN RENDERING THE ASSAILED RESOLUTIONS, HAVING DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, CONSIDERING THAT:

I.

THE PREVIOUS COMPLAINT FOR REGULARIZATION AND/OR ILLEGAL DISMISSAL, WHICH IS NOW PENDING RESOLUTION BEFORE THE SUPREME COURT, POSES A PREJUDICIAL QUESTION TO THE SUBJECT OF THE PRESENT CASE.

II.

GIVEN THE ATTENDANT CIRCUMSTANCES, RESPONDENT CLIMACO IS GUILTY OF FORUM SHOPPING, WHICH THEREBY CALLED FOR THE OUTRIGHT DISMISSAL OF HIS PETITION BEFORE THE SOCIAL SECURITY COMMISSION.

III.

THE PETITION SHOULD HAVE ALSO BEEN DISMISSED OUTRIGHT ON THE GROUND OF *LITIS PENDENTIA*, AS THERE ARE OTHER ACTIONS PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OF ACTION.[34] (Underscoring supplied)

Our Ruling

The petition fails.

The Court notes that petitioners, in their petition, averred that the appeal from the NLRC and CA dispositions on the

---

[33] *Id*. at 35.

[34] *Id*. at 8.

illegal dismissal of respondent Climaco is still pending with this Court. Upon verification, however, it was unveiled that the said case had already been decided by this Court's First Division on February 5, 2007.

While we deplore the failure of petitioners and counsel in updating the Court on the resolution of the said related case, We hasten to state that it did not operate to moot the issues pending before Us. We take this opportunity to address the questions on prejudicial question, forum shopping, and *litis pendentia*.

No prejudicial question exists.

Petitioners allege that Dr. Climaco previously filed separate complaints before the NLRC seeking recognition as a regular employee. Necessarily then, a just resolution of these cases hinge on a determination of whether or not Dr. Climaco is an employee of the company.[35] The issue of whether Dr. Climaco is entitled to employee benefits, as prayed for in the NLRC cases, is closely intertwined with the issue of whether Dr. Climaco is an employee of the company who is subject to compulsory coverage under the SSS Law. Hence, they argue, said regularization/illegal dismissal case is a prejudicial question.

The argument is untenable.

Our concept of prejudicial question was lifted from Spain, where civil cases are tried exclusively by civil courts, while criminal cases are tried exclusively in criminal courts. Each kind of court is jurisdictionally distinct from and independent of the other. In the Philippines, however, courts are invariably tribunals of general jurisdiction. This means that courts here exercise jurisdiction over both civil and criminal cases. Thus, it is not impossible that the criminal case, as well as the civil case in which a prejudicial question may rise, may be both pending in the same court. For this reason, the elements of prejudicial question have been modified in such a way that the phrase

---

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

"pendency of the civil case in a different tribunal" has been eliminated.[36]

The rule is that **there is prejudicial question when (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed**.[37] It comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed. This is so because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[38]

Here, **no prejudicial question exists because there is no pending criminal case**.[39] The consolidated NLRC cases **cannot** be considered as "previously instituted civil action." In *Berbari v. Concepcion*,[40] it was held that a prejudicial question is understood in law to be **that which must precede the criminal action**, that which requires a decision with which said question is closely related.

Neither can the doctrine of prejudicial question be applied by analogy. The issue in the case filed by Dr. Climaco with the SSC involves the question of whether or not he is an employee of Coca-Cola Bottlers (Phils.), Inc. and subject to the compulsory coverage of the Social Security System. On the contrary, the cases filed by Dr. Climaco before the NLRC involved different issues. In his first complaint,[41] Dr. Climaco sought recognition

---

[36] Pamaran, M.R., *The 1985 Rules on Criminal Procedure Annotated* (2001), pp. 153-154.

[37] RULES OF COURT, Rule 111, Sec. 7.

[38] *Flordelis v. Castillo,* G.R. No. L-36703, July 31, 1974, 58 SCRA 301, 305.

[39] *Ocampo v. Buenaventura,* G.R. No. L-32293, January 24, 1974, 55 SCRA 267, 271.

[40] 40 Phil. 837 (1920).

[41] NLRC RAB VI Case No. 06-02-10138-94.

as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[42] The second complaint[43] was for illegal dismissal, with prayer for reinstatement to his former position as company physician of the company's Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages.[44] Thus, the issues in the NLRC cases are not determinative of whether or not the SSC should proceed. It is settled that the question claimed to be prejudicial in nature must be determinative of the case before the court.[45]

There is no forum shopping.

Anent the second issue, petitioners posit that since the issues before the NLRC and the SSC are the same, the SSC cannot make a ruling on the issue presented before it without necessarily having a direct effect on the issue before the NLRC. It was patently erroneous, if not malicious, for Dr. Climaco to invoke the jurisdiction of the SSC through a separate petition.[46] Thus, petitioners contend, Dr. Climaco was guilty of forum shopping.

Again, We turn down the contention.

Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes.[47] It is proscribed because it unnecessarily burdens the courts with heavy caseloads. It also unduly taxes the manpower and financial resources of the judiciary. It mocks the judicial processes, thus, affecting the efficient administration of justice.[48]

---

[42] *Rollo,* pp. 107-119.

[43] NLRC RAB VI Case No. 06-04-10177-95.

[44] *Rollo,* pp. 120-123.

[45] *People v. Aragon,* 94 Phil. 357 (1954).

[46] *Rollo,* pp. 9-10.

[47] *Maricalum Mining Corporation v. Drilon,* G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 106.

[48] *Abines v. Bank of the Philippine Islands,* G.R. No. 167900, February 13, 2006, 482 SCRA 421, 428.

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two (2) competent tribunals of two (2) separate and contradictory decisions. Unscrupulous litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached.[49]

It is well to note that forum shopping traces its origin in private international law on choice of venues, which later developed to a choice of remedies. In *First Philippine International Bank v. Court of Appeals*,[50] the Court had occasion to outline the origin of the rule on forum shopping. Said the Court:

> x x x forum shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
>
> x x x x x x x x x

In the Philippines, forum shopping has acquired a connotation encompassing not only a choice of venues, as it was originally understood in conflicts of laws, but also to a choice of remedies. As to the first (choice of venues), the Rules of Court, for example, allow a plaintiff to commence personal actions "where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff" (Rule 4, Sec. 2[b]). As to remedies, aggrieved parties, for example, are given a choice of pursuing civil liabilities independently of the

---

[49] *Guevarra v. BPI Securities Corporation,* G.R. No. 159786, August 15, 2006, 498 SCRA 613, 638.

[50] G.R. No. 115849, January 24, 1996, 252 SCRA 259.

criminal, arising from the same set of facts. A passenger of a public utility vehicle involved in a vehicular accident may sue on *culpa contractual, culpa aquiliana* or *culpa criminal* — each remedy being available independently of the others — although he cannot recover more than once.

> "In either of these situations (choice of venue or choice of remedy), the litigant actually *shops for a forum* of his action. This was the original concept of the term forum shopping.
>
> "Eventually, however, instead of actually making a choice of the forum of their actions, litigants, through the encouragement of their lawyers, file their actions in all available courts, or invoke all relevant remedies simultaneously. This practice had not only resulted to (*sic*) conflicting adjudications among different courts and consequent confusion enimical (*sic*) to an orderly administration of justice. It had created extreme inconvenience to some of the parties to the action.
>
> "Thus, 'forum-shopping' had acquired a different concept — which is unethical professional legal practice. And this necessitated or had given rise to the formulation of rules and canons discouraging or altogether prohibiting the practice."

What therefore started both in conflicts of laws and in our domestic law as a legitimate device for solving problems has been abused and misused to assure scheming litigants of dubious reliefs.[51]

Thus, in order to prevent forum shopping, the 1997 Rules of Civil Procedure now provide:

SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or

---

[51] *First Philippine International Bank v. Court of Appeals, id.* at 281-282.

claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[52]

Forum shopping is not only strictly prohibited but also condemned. So much so that "[f]ailure to comply with the foregoing requirements shall not be curable by mere amendment of the initiatory pleading but shall be cause for the dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions."[53]

There is forum shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court.[54] In short, **forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other**.[55]

There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order

---

[52] RULES OF COURT, Rule 7, Sec. 5.

[53] *Id*.

[54] *Maricalum Mining Corporation v. Drilon,* G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 105-106.

[55] *Guaranteed Hotels, Inc. v. Baltao,* G.R. No. 164338, January 17, 2005, 448 SCRA 738, 744; *Young v. Keng Seng,* G.R. No. 143464, March 5, 2003, 398 SCRA 629; *Philippine Nails and Wires Corporation v. Malaya Insurance Company, Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431.

is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action.[56]

Measured by the foregoing yardstick, Dr. Climaco is not guilty of forum shopping. While it is true that the parties are identical in the NLRC and in the SSC, the reliefs sought and the causes of action are different.

Admittedly, Dr. Climaco's basis in filing the cases before the NLRC and the SSC is his Retainer Agreement with the company. This does not mean, however, that his causes of action are the same:

x x x Some authorities declare the distinction between demands or rights of action which are single and entire and those which are several and distinct to be that the former arise out of one and the same act or contract and the latter out of different acts or contracts. This rule has been declared to be unsound, however, and as evidence of its unsoundness, reference has been made to the fact that several promissory notes may, and often do, grow out of one and the same transaction, and yet they do not constitute an entire demand. The better rule is that the bare fact that different demands spring out of the same or contract does not *ipso facto* render a judgment on one a bar to a suit on another, however distinct. It is clear that the right of a plaintiff to maintain separate actions cannot be determined by the fact that the claims might have been prosecuted in a single action. A plaintiff having separate demands against a defendant may, at his election, join them in the same action, or he may prosecute them separately, subject of the power of the court to order their consolidation. There may be only one cause of action although the plaintiff is entitled to several forms and kinds of relief, provided there is not more than one primary right sought to be enforced or

---

[56] *Romero v. Tan,* G.R. No. 147570, February 27, 2004, 424 SCRA 108; *San Diego v. Cardona,* 70 Phil. 281 (1940). *Res judicata* was founded upon two (2) grounds in various maxims of the common law, namely: (1) public policy and necessity which makes it to the interest of the state that there should be an end to litigation, *interest reipublicae ut sit finis litum*; and (2) the hardship on the individual that he should be vexed twice for the same cause, *demo debet vexari et eadem causa*. (*Malayang Samahan ng Manggagawa sa Balanced Food v. Pinakamasarap Corporation,* G.R. No. 139068, January 16, 2004, 420 SCRA 84, 85, citing *Arenas v. Court of Appeals,* G.R. No. 126640, November 23, 2000, 345 SCRA 617).

one subject of controversy presented for adjudication.[57] (Underscoring supplied)

As the SSC and the CA correctly observed, different laws are applicable to the cases before the two tribunals. The Labor Code and pertinent social legislations would govern the cases before the NLRC, while the Social Security Law would govern the case before the SSC. Clearly, as the issues pending before the NLRC and the SSC are diverse, a ruling on the NLRC cases would not amount to *res judicata* in the case before the SSC.

The elements of litis pendentia are absent.

Lastly, petitioners contend that the petition of Dr. Climaco before the SSC is defective because there were pending actions between the same parties and involving the same issues in different fora.[58]

For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[59]

In the case under review, there is no *litis pendentia* to speak of. As previously explained, although the parties in the cases before the NLRC and the SSC are similar, the nature of the cases filed, the rights asserted, and reliefs prayed for in each tribunal, are different.

---

[57] 1 Am. Jur., Sec. 97.

[58] *Rollo,* p. 13.

[59] *Olayvar v. Olayvar,* 98 Phil. 52 (1955); *Diana v. Batangas Transportation,* 93 Phil. 391 (1953); *Mid-Pasig Land Development Corporation v. Court of Appeals,* G.R. No. 153751, October 8, 2003, 413 SCRA 204; *Panganiban v. Pilipinas Shell Petroleum Corporation,* G.R. No. 131471, January 22, 2003, 395 SCRA 624.

As a last attempt, however, petitioners invoke Rule 16, Section 1(e) of the 1997 Rules of Civil Procedure. Petitioners contend that the petition Dr. Climaco lodged with the SSC is "another action" prohibited by the Rule.[60]

In *Solancio v. Ramos*,[61] the issue centered on whether the pending administrative case before the Bureau of Lands is "another action," which would justify the dismissal of the complaint of plaintiff against defendants before the then Court of First Instance (now RTC) of Cagayan. Ruling in the negative, the Court noted that "both parties as well as the trial court have missed the extent or meaning of the ground of the motion to dismiss as contemplated under the Rules of Court."[62] Mr. Justice Regala, who wrote the opinion of the Court, explained the phrase "another action" in this wise:

> This is not what is contemplated under the law because under Section 1(d), Rule 16 (formerly Rule 8) of the Rules of Court, [now Rule 1, Section 16(e) of the Rules of Court, *supra*] one of the grounds for the dismissal of an action is that "there is another action pending between the same parties for the same cause." Note that the Rule uses the phrase "another action." This phrase should be construed in line with Section 1 of Rule 2, which defines the word action, thus —
>
> > "Action means an ordinary suit *in a court of justice,* by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding."[63]

Evidently, there is no "another action" pending between petitioners and Dr. Climaco at the time when the latter filed a petition before the SSC.

---

[60] Section 1. *Grounds*. — Within the time for but before the filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(e) That there is **another action** pending between the parties pending between the same parties for the same cause. (Emphasis supplied)

[61] G.R. No. L-20408, April 27, 1967, 19 SCRA 848.

[62] *Solancio v. Ramos, id*. at 851.

[63] *Id*.

WHEREFORE, the petition is *DENIED* and the appealed decision *AFFIRMED.*

Costs against petitioners.

SO ORDERED.

Puno, C.J.,[*] *Ynares-Santiago, Austria-Martinez,* and *Chico-Nazario, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159494. July 31, 2008]

ROGELIO, GEORGE, LOLITA, ROSALINDA, and JOSEPHINE, all surnamed PASIÑO, represented by their father and attorney-in-fact JOSE PASIÑO, *petitioners, vs.* **DR. TEOFILO EDUARDO F. MONTERROYO, substituted by ROMUALDO MONTERROYO, MARIA TERESA MONTERROYO, and STEPHEN MONTERROYO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TITLES AND DEEDS; ALIENABLE PUBLIC LAND; *IPSO JURE* CONVERTED TO PRIVATE PROPERTY BY MERE LAPSE OR COMPLETION OF 30 YEARS OF OPEN, CONTINUOUS AND EXCLUSIVE POSSESSION BY A PARTY. — In *Director of Lands v. IAC,* the Court ruled: [A]lienable public land held by a possessor, continuously or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under The Public

---

[*] Designated as additional member vice Associate Justice Antonio Eduardo B. Nachura who took no part in the present case.

Land Act, as amended) is converted to private property by the mere lapse or completion of the period, *ipso jure*. In *Magistrado v. Esplana*, the Court ruled that so long as there is a clear showing of open, continuous, exclusive and notorious possession, and hence, a registrable possession, by present or previous occupants, by any proof that would be competent and admissible, the property must be considered to be private.

2. ID.; ID.; ID.; ID.; LAND MANAGEMENT BUREAU HAS NO JURISDICTION TO ENTERTAIN A SECOND PARTY'S APPLICATION FOR FREE PATENT TITLES AFTER THE LOT IN POSSESSION OF THE FIRST PARTY HAS BECOME PRIVATE LAND. — Considering that petitioners' application for free patent titles was filed only on 8 January 1994, when Lot No. 2139 had already become private land *ipso jure*, the Land Management Bureau had no jurisdiction to entertain petitioners' application.

3. ID.; ID.; HOMESTEAD PATENT; REGISTRATION IS OPERATIVE ACT TO CONVEY THE LAND TO GRANTEE. — Once a homestead patent granted in accordance with law is registered, the certificate of title issued by virtue of the patent has the force and effect of a Torrens title issued under the land registration law. In this case, the issuance of a homestead patent in 1952 in favor of Laureano was not registered. Section 103 of Presidential Decree No. 1529 mandates the registration of patents, and registration is the operative act to convey the land to the patentee, thus: Sec. 103. x x x. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. **It is the act of registration that shall be the operative act to affect and convey the land,** and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.

4. REMEDIAL LAW; CIVIL PROCEDURE; COUNTERCLAIM; A COUNTERCLAIM IS CONSIDERED AN ORIGINAL COMPLAINT; COUNTERCLAIM CLAIMING OWNERSHIP

OF LAND IS NOT COLLATERAL ATTACK ON TITLE. — It is already settled that a counterclaim is considered an original complaint and as such, the attack on the title in a case originally for recovery of possession cannot be considered as a collateral attack on the title. *Development Bank of the Philippines v. Court of Appeals* is similar to the case before us insofar as petitioner in that case filed an action for recovery of possession against respondent who, in turn, filed a counterclaim claiming ownership of the land. In that case, the Court ruled: Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same. 'A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action.' x x x.

5. CIVIL LAW; PROPERTY; PRINCIPLE OF CONSTRUCTIVE TRUST; EXPLAINED. — Under the principle of constructive trust, registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance. In the action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.

APPEARANCES OF COUNSEL

Rogelio Zosa Bagabuyo and Zaide Law Office for petitioners.
Padilla & Padilla Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 31 January 2003 Decision[2] and the 5 August 2003 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 63199. The Court of Appeals affirmed the Decision[4] dated 2 February 1999 of the Regional Trial Court of Iligan City, Branch 6 (trial court), in Civil Case No. 06-3060.

The Antecedent Facts

This case originated from an action for recovery of possession and damages, with prayer for the issuance of a temporary restraining order or writ of preliminary mandatory injunction, filed by Rogelio, George, Lolita, Rosalinda and Josephine, all surnamed Pasiño, represented by their father and attorney-in-fact Jose Pasiño (petitioners) against Dr. Teofilo Eduardo F. Monterroyo (Dr. Monterroyo), later substituted by his heirs Romualdo, Maria Teresa and Stephen, all surnamed Monterroyo (respondents).

Cad. Lot No. 2139 of Cad. 292, Iligan Cadastre (Lot No. 2139), with an area of 19,979 square meters, located at Panul-iran, Abuno, Iligan City, was part of a 24-hectare land occupied, cultivated

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 42-60. Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Ruben T. Reyes and Remedios Salazar-Fernando, concurring.

[3] *Id*. at 40.

[4] *Id*. at 61-85. Penned by Judge Valerio M. Salazar.

and cleared by Laureano Pasiño (Laureano) in 1933. The 24-hectare land formed part of the public domain which was later declared alienable and disposable. On 18 February 1935, Laureano filed a homestead application over the entire 24-hectare land under Homestead Application No. 205845.[5] On 22 April 1940, the Bureau of Forestry wrote Laureano and informed him that the tract of land covered by his application was not needed for forest purposes.[6] On 11 September 1941, the Director of Lands issued an Order[7] approving Laureano's homestead application and stating that Homestead Entry No. 154651 was recorded in his name for the land applied for by him.

Laureano died on 24 March 1950. On 15 April 1952, the Director of Lands issued an Order[8] for the issuance of a homestead patent in favor of Laureano, married to Graciana Herbito[9] (Graciana). Laureano's heirs did not receive the order and consequently, the land was not registered under Laureano's name or under that of his heirs. In 1953, the property was covered by Tax Declaration No. 11102[10] in the name of Laureano with Graciana[11] as administrator.

Between 1949 and 1954, a Cadastral Survey was conducted in Iligan City. The surveyor found that a small creek divided the 24-hectare parcel of land into two portions, identified as Lot No. 2138 and Lot No. 2139.

Petitioners claimed that Laureano's heirs, headed by his son Jose, continuously possessed and cultivated both lots. On 16 October 1962, Jose's co-heirs executed a Deed of Quitclaim

---

[5] Records, Vol. 1, p. 141.

[6] *Id*. at 145. Signed by Doroteo Soriano, Chief of Division of Forest Engineering.

[7] *Id*. at 142.

[8] *Id*. at 146.

[9] Referred to as Graciana Herbeto in the trial court's Decision.

[10] Records, Vol. 1, p. 150.

[11] Casiana in the Declaration of Real Property.

renouncing their rights and interest over the land in favor of Jose. Jose secured a title in his name for Lot No. 2138. Later, Jose alienated Lot No. 2139 in favor of his children (petitioners in this case) who, on 8 January 1994, simultaneously filed applications for grant of Free Patent Titles over their respective shares of Lot No. 2139 before the Land Management Bureau of the Department of Environment and Natural Resources (DENR). On 22 August 1994, the DENR granted petitioners' applications and issued Original Certificate of Title (OCT) No. P-1322 (a.f.) in favor of Rogelio Pasiño, OCT No. P-1318 (a.f.) in favor of George Pasiño, OCT No. P-1317 (a.f.) in favor of Lolita Pasiño, OCT No. P-1321 (a.f.) in favor of Josephine Pasiño, and OCT No. P-1319 (a.f.) in favor of Rosalinda Pasiño. Petitioners alleged that their possession of Lot No. 2139 was interrupted on 3 January 1993 when respondents forcibly took possession of the property.

Respondents alleged that they had been in open, continuous, exclusive and notorious possession of Lot No. 2139, by themselves and through their predecessors-in-interest, since 10 July 1949. They alleged that on 10 July 1949, Rufo Larumbe (Larumbe) sold Lot No. 2139 to Petra Teves (Petra). On 27 February 1984, Petra executed a deed of sale over Lot No. 2139 in favor of Vicente Teves (Vicente). On 20 February 1985, Vicente executed a *pacto de retro* sale over the land in favor of Arturo Teves (Arturo). In 1992, Arturo sold Lot No. 2139 in favor of respondents' father, Dr. Monterroyo, by virtue of an oral contract. On 5 January 1995, Arturo executed a Deed of Confirmation of Absolute Sale of Unregistered Land in favor of Dr. Monterroyo's heirs.

Respondents alleged that Jose was not the owner of Lot No. 2139 and as such, he could not sell the land to his children. They alleged that petitioners' OCTs were null and void for having been procured in violation of the Public Land Act. They further alleged that the Land Management Bureau had no authority to issue the free patent titles because Lot No. 2139 was a private land.

The Ruling of the Trial Court

In its 2 February 1999 Decision, the trial court ruled, as follows:

> WHEREFORE, judgment is rendered in favor of all the defendants and against the plaintiffs:
>
> 1. Dismissing the complaint;
> 2. Declaring Lot No. 2139, Iligan Cadastre 292, located at Panul-iran, Abuno, Iligan City to have acquired the character of a private land over which the Land Management Bureau has been divested of jurisdiction;
> 3. Declaring the defendants to be the owners and possessors of the said lot;
> 4. Declaring OCT Nos. P-1322 (a.f.) of Rogelio Pasiño, P-1318 (a.f.) of George Pasiño, P-1317 (a.f.) of Lolita Pasiño, P-1321 (a.f.) of Josephine Pasiño and P-1319 (a.f.) of Rosalinda Pasiño to be null and void for having been procured by fraud and for having been issued by the Land Management Bureau which has been divested of jurisdiction over said lot;
> 5. Declaring the defendants to be entitled to the sum of ₱6,000.00 deposited with the Office of the Clerk of Court under O.R. No. 1487777;
> 6. Dismissing the defendants' counterclaim for attorney's fees.
>
> Costs against the plaintiffs.
>
> SO ORDERED.[12]

The trial court ruled that as of January 1994, Lot No. 2139 had already acquired the character of a private land by operation of law. Since Lot No. 2139 had already ceased to be a public land, the Land Management Bureau had no power or authority to dispose of it by issuing free patent titles.

The trial court ruled that respondents' counterclaim stands on the same footing as an independent action. Thus, it could

---

[12] *Rollo,* pp. 84-85.

not be considered a collateral attack on petitioners' titles. The trial court further ruled that respondents filed their counterclaim within one year from the grant of petitioners' titles, which was the reglementary period for impugning a title.

The trial court ruled that the order for the issuance of a patent in favor of Laureano lapsed and became *functus officio* when it was not registered with the Director of Deeds. The trial court ruled that while Laureano was the original claimant of the entire 24 hectares, he ceded the right to possession over half of the property, denominated as Lot No. 2139, to Larumbe sometime in 1947. The trial court found that Laureano offered to sell half of the land to his tenant Gavino Quinaquin (Gavino) but he did not have money. Later, Gavino learned from Larumbe that he (Larumbe) acquired half of the land from Laureano. Gavino then started delivering the owner's share of the harvest to Larumbe. Laureano never contested Gavino's action nor did he demand that Gavino deliver to him the owner's share of the harvest and not to Larumbe. When Lot No. 2139 was sold, Gavino and his successors delivered the owner's share of the harvest to Petra, Vicente, Arturo, Dr. Monterroyo, and Dindo Monterroyo, successively. The trial court also found that the other tenants had never given any share of the harvest to Jose. The trial court ruled that petitioners had failed to present convincing evidence that they and their predecessors-in-interest were in possession of Lot No. 2139 from 1947 to 1994 when they filed their application for free patent. The trial court ruled that petitioners committed actual fraud when they misrepresented in their free patent applications that they were in possession of the property continuously and publicly.

Petitioners appealed from the trial court's Decision.

The Ruling of the Court of Appeals

In its 31 January 2003 Decision, the Court of Appeals affirmed the trial court's Decision.

The Court of Appeals ruled that the trial court did not err in allowing respondents' counterclaim despite the non-appearance of Dr. Monterroyo, the original defendant, at the *barangay*

conciliation proceedings. The Court of Appeals ruled that petitioners themselves did not personally appear. They were represented by their attorney-in-fact although they were all of legal age, which was a violation of the *Katarungang Pambarangay* proceedings requiring the personal appearance of the parties. Hence, the Court of Appeals ruled that there was never a valid conciliation proceeding. However, while this would have been a ground for the dismissal of the complaint, the issue was deemed waived because respondents did not raise it in their answer before the trial court.

The Court of Appeals ruled that the validity of petitioners' titles could be attacked in a counterclaim. The Court of Appeals ruled that respondents' counterclaim was a compulsory counterclaim.

The Court of Appeals sustained the trial court's ruling that the Land Management Bureau had been divested of jurisdiction to grant the patent because the land already acquired the character of a private land. While the homestead patent was issued in favor of Laureano, the issuance of patent order became *functus officio* when it was not registered. The Court of Appeals further sustained the trial court's finding that respondents were in physical, open, public, adverse and continuous possession of Lot No. 2139 in the concept of owner for at least 30 years prior to petitioners' application for free patent titles over the land.

Petitioners filed a motion for reconsideration.

In its 5 August 2003 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

Hence, the petition before this Court.

The Issue

Petitioners raised the sole issue of whether the Court of Appeals erred in sustaining the trial court's Decision declaring respondents as the rightful owners and possessors of Lot No. 2139.[13]

[13] *Id*. at 366.

The Ruling of this Court

The petition has no merit.

Land Management Bureau Had No Jurisdiction To Issue Free Patent Titles

In *Director of Lands v. IAC*,[14] the Court ruled:

> [A]lienable public land held by a possessor, continuously or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of the period, *ipso jure*.[15]

In *Magistrado v. Esplana*,[16] the Court ruled that so long as there is a clear showing of open, continuous, exclusive and notorious possession, and hence, a registrable possession, by present or previous occupants, by any proof that would be competent and admissible, the property must be considered to be private.

In this case, the trial court found that the preponderance of evidence favors respondents as the possessors of Lot No. 2139 for over 30 years, by themselves and through their predecessors-in-interest. The question of who between petitioners and respondents had prior possession of the property is a factual question whose resolution is the function of the lower courts.[17] When the factual findings of both the trial court and the Court of Appeals are supported by substantial evidence, they are conclusive and binding on the parties and are not reviewable by this Court.[18] While the rule is subject to exceptions, no exception exists in this case.

Respondents were able to present the original Deed of Absolute Sale, dated 10 July 1949, executed by Larumbe in favor of

---

[14] 230 Phil. 590 (1986).

[15] *Id.* at 605.

[16] G.R. No. 54191, 8 May 1990, 185 SCRA 104.

[17] *De Guzman v. Court of Appeals*, 442 Phil. 534 (2002).

[18] *Id*.

Petra.[19] Respondents also presented the succeeding Deeds of Sale showing the transfer of Lot No. 2139 from Petra to Vicente[20] and from Vicente to Arturo[21] and the Deed of Confirmation of Absolute Sale of Unregistered Real Property executed by Arturo in favor of respondents.[22] Respondents also presented a certification[23] executed by P/Sr. Superintendent Julmunier Akbar Jubail, City Director of Iligan City Police Command and verified from the Log Book records by Senior Police Officer Betty Dalongenes Mab-Abo confirming that Andres Quinaquin made a report that Jose, Rogelio and Luciana Pasiño, Lucino Pelarion and Nando Avilo forcibly took his copra. This belied petitioners' allegation that they were in possession of Lot No. 2139 and respondents forcibly took possession of the property only in January 1993.

Considering that petitioners' application for free patent titles was filed only on 8 January 1994, when Lot No. 2139 had already become private land *ipso jure*, the Land Management Bureau had no jurisdiction to entertain petitioners' application.

Non-Registration of Homestead Patent Rendered it Functus Officio

Once a homestead patent granted in accordance with law is registered, the certificate of title issued by virtue of the patent has the force and effect of a Torrens title issued under the land registration law.[24] In this case, the issuance of a homestead patent in 1952 in favor of Laureano was not registered. Section 103 of Presidential Decree No. 1529[25] mandates the registration

---

[19] Records, Vol. 1, pp. 280-281.

[20] *Id.* at 282-283.

[21] *Id.* at 284-285.

[22] Records, Vol. 2, pp. 314-315.

[23] *Id.* at 311.

[24] *Heirs of Santioque v. Heirs of Calma*, G.R. No. 160832, 27 October 2006, 505 SCRA 665.

[25] Formerly Section 122 of the Land Registration Law.

of patents, and registration is the operative act to convey the land to the patentee, thus:

> Sec. 103. x x x. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. **It is the act of registration that shall be the operative act to affect and convey the land**, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree. (Emphasis supplied)

Further, in this case, Laureano already conveyed Lot No. 2139 to Larumbe in 1947 before the approval of his homestead application. In fact, Larumbe already sold the land to Petra in 1949, three years before the issuance of the homestead patent in favor of Laureano. The trial court found that since 1947, the tenants of Lot No. 2139 had been delivering the owner's share of the harvest, successively, to Larumbe, Petra, Vicente and Arturo Teves, Dr. Monterroyo and Dindo Monterroyo. The trial court found no instance when the owner's share of the harvest was delivered to Jose Pasiño.

Hence, we sustain the trial court that the non-registration of Laureano's homestead patent had rendered it *functus officio*.

A Counterclaim is Not a Collateral Attack on the Title

It is already settled that a counterclaim is considered an original complaint and as such, the attack on the title in a case originally for recovery of possession cannot be considered as a collateral attack on the title.[26] *Development Bank of the Philippines v. Court of Appeals*[27] is similar to the case before us insofar as

---

[26] *Sarmiento v. Court of Appeals*, G.R. No. 152627, 16 September 2005, 470 SCRA 99.

[27] 387 Phil. 283 (2000).

petitioner in that case filed an action for recovery of possession against respondent who, in turn, filed a counterclaim claiming ownership of the land. In that case, the Court ruled:

> Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same. 'A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action.' x x x.[28]

As such, we sustain both the trial court and the Court of Appeals on this issue.

Principle of Constructive Trust Applies

Under the principle of constructive trust, registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance.[29] In the action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right.[30] If the registration of the land is fraudulent, the person in whose name the land is

---

[28] *Id.* at 300.

[29] *Heirs of Tabia v. Court of Appeals*, G.R. Nos. 129377 & 129399, 22 February 2007, 516 SCRA 431.

[30] *Id.*

registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[31]

In the case before us, respondents were able to establish that they have a better right to Lot No. 2139 since they had long been in possession of the property in the concept of owners, by themselves and through their predecessors-in-interest. Hence, despite the irrevocability of the Torrens titles issued in their names and even if they are already the registered owners under the Torrens system, petitioners may still be compelled under the law to reconvey the property to respondents.[32]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 31 January 2003 Decision and the 5 August 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 63199. Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Austria-Martinez,[*] *Corona,* and *Leonardo-de Castro, JJ.,* concur.

---

[31] *Mendizabel v. Apao,* G.R. No. 143185, 20 February 2006, 482 SCRA 587.

[32] *Id*.

[*] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

THIRD DIVISION

[G.R. No. 161881. July 31, 2008]

NICASIO I. ALCANTARA, *petitioner, vs.* **DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES, DENR SECRETARY ELISEA G. GOZUN, REGIONAL EXECUTIVE DIRECTOR MUSA C. SARUANG, DENR CENRO ANDREW B. PATRICIO, and ROLANDO PAGLANGAN, *ET AL.*,** *respondents.*

HEIRS OF DATU ABDUL B. PENDATUN, represented by DATU NASSER B. PENDATUN, AL HAJ, HEIRS OF SABAL MULA and GAWAN CLAN, represented by TRIBAL CHIEF-TAIN LORETO GAWAN, *respondents-intervenors.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; ANCESTRAL DOMAIN; SECTION 56 OF INDIGENOUS PEOPLE'S RIGHTS ACT (IPRA); RESIDUAL RIGHT TO REMAIN ON THE PROPERTY. — Petitioner's claim that he has residual rights to remain on the property is based on Section 56 of the IPRA, which states: SEC. 56. *Existing Property Rights Regimes*. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

2. ID.; ID.; ID.; ID.; ID.; PETITIONER ALCANTARA HAS NO RESIDUAL RIGHTS AND NO ENTITLEMENT TO THE LAND. — The contention of petitioner has no merit. As stated in the Court's decision in G.R. No. 145838, the legal dispute surrounding petitioner's FLGLA No. 542 began in 1990, which was before the IPRA's passage in 1997, and even before the FLGLA was renewed in 1993. Thus, the case is not covered by IPRA, but by other laws existing at the time the COSLAP took cognizance of the case. IPRA also did not cure the legal defects and infirmities of FLGLA No. 542, which were already the subject of controversy by the time the law was passed. The question whether FLGLA No. 542 is valid has been settled conclusively in G.R. No. 145838 in which the Court made the

final finding that FLGLA No. 542 was issued illegally, and that it was made in violation of prevailing laws; and that it was proper for it to be cancelled. Petitioner's proposition that despite the lengthy litigation that culminated in the invalidation of FLGLA No. 542, he still has the "residual right" to enjoy use of the land until December 31, 2018 is absolutely unacceptable. His stance invites anomaly at best, or ridicule at worst, for it asks this Court to render useless its own final decision in G.R. No. 145838. It also solicits disrespect of all judicial decisions and processes. Instead of ending the litigation, it mocks the painstaking process undertaken by the courts and administrative agencies to arrive at the decision in that case. Petitioner's alleged "residual right" has no legal basis and contradicts his admission that FLGLA No. 542 has been declared invalid by the Court in its decision in G.R. No. 145838. Petitioner has had no residue of any right and no entitlement to the land, from the very beginning. Petitioner's concern over his alleged rights under the IPRA have all been addressed in G.R. No. 145838. The IPRA was enacted on October 29, 1997. The decision in G.R. No. 145838 was promulgated on July 20, 2001. On that later date, the Court was already aware of IPRA; and when it rendered the decision, it could have expressly declared that petitioner had residual rights under that law if such was the case. The Court applied P.D. No. 410, the law in effect before the IPRA, in finding that FLGLA No. 542 was illegal. This finally disposes of petitioner's claim that he has rights under the IPRA.

3. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; WHEN IT EXISTS; CASE AT BAR. — In fact, the Court sees petitioner's filing of the present petition as outright forum-shopping, as it seeks to revisit what has become a final and executory decision. As explained in earlier cases, the hallmarks of forum-shopping are: Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. Thus, there is forum-shopping when, between an action pending before this Court and another one, there exist: "a) identity of parties, or at least such parties as represent the same interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is

successful amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant or lis pendens*." Another case elucidates the consequence of forum-shopping: "[W]here a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest." Thus, when petitioner raised the issue on whether he should be allowed to remain on the subject land until the expiration of FLGLA No. 542, based on his alleged residual rights, he re-opened an issue already discussed and settled in an earlier case. His use of cleverly disguised language does not hide this fact. Clearly, the Supreme Court decision, in G.R. No. 145838, is *res judicata* in the present case. Therefore, his filing of the present case despite the finality of an earlier identical case makes the present one subject to dismissal.

4. ID.; ID.; *RES JUDICATA*; TWO CONCEPTS. — It has been held that *res judicata* has two concepts: bar by prior judgment and conclusiveness of judgment. The elements under the first concept are the following: (1) a former final judgment that was rendered on the merits; (2) the court in the former judgment had jurisdiction over the subject matter and the parties; and, (3) identity of parties, subject matter and cause of action between the first and second actions; On the other hand, for the second concept to operate, or for there to be conclusiveness of judgment, there must be identity of parties and subject matter in the first and second cases, but no identity of causes of action. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.

5. POLITICAL LAW; CONSTITUTIONAL LAW; USE OF NATURAL RESOURCES AND PUBLIC LANDS; LICENSE TO USE THEM IS NOT A PROPERTY OR A PROPERTY RIGHT. — It must be emphasized that FLGLA No. 542 is a mere license or privilege granted by the State to petitioner for the use or exploitation of natural resources and public lands over which the State has sovereign ownership under the Regalian Doctrine. Like timber or mining licenses, a forest land grazing lease agreement is a mere permit which, by executive action, can be revoked, rescinded, cancelled, amended or modified, whenever public welfare or public interest so requires. The determination of what is in the public interest is necessarily vested in the State as owner of the country's natural resources. Thus, a privilege or license is not in the nature of a contract that enjoys protection under the due process and non-impairment clauses of the Constitution. In cases in which the license or privilege is in conflict with the people's welfare, the license or privilege must yield to the supremacy of the latter, as well as to the police power of the State. **Such a privilege or license is not even a property or property right, nor does it create a vested right; as such, no irrevocable rights are created in its issuance.**

APPEARANCES OF COUNSEL

Yngson and Associates for petitioner.

Romeo Dela Cruz & Associates for respondents-intervenors.

Vencer Lacap Canacan & Seredrica Law Office for R. Paglangan, *et al*.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking a reversal of the Decision[1]

[1] Penned by Associate Justice B.A. Adefuin-De la Cruz with the concurrence of Associate Justices Eliezer R. de los Santos and Jose C. Mendoza; *rollo*, pp. 46-52.

of the Court of Appeals (CA) dated September 24, 2003 which affirmed the orders of the Department of Environment and Natural Resources (DENR), cancelling the Forest Land Grazing Lease Agreement (FLGLA) with Nicasio A. Alcantara (petitioner), ordering him to vacate the land subject of the cancelled FLGLA and directing the installation of members of a group composed of B'laan and Maguindanaoans, represented by Rolando Paglangan (private respondents) in the area; as well as the CA Resolution[2] dated January 23, 2004 denying petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Petitioner is a lessee under FLGLA No. 542, issued by the DENR, of nine hundred twenty-three (923) hectares of public forest land[3] (subject land) located in the vicinity of Sitio Lanton, Barrio Apopong, General Santos City.[4]

The subject land, however, is being claimed as the ancestral land of the indigenous B'laan and Maguindanao people, who maintain that they and their predecessors have been cultivating, possessing and occupying it since time immemorial.[5] They claim that Christian settlers (settlers) started occupying the area only after World War II. As a result, there was constant friction between the indigenous inhabitants and the settlers, with the disputes, at times, erupting in violence. Overpowered, the indigenous people eventually lost physical control of much of the land.[6]

Petitioner, a son of one of the settlers, used to hold a pasture permit over the subject land, which was later on converted into

---

[2] *Id*. at 54.

[3] *Id*. at 5.

[4] CA *rollo*, p. 35.

[5] *Rollo*, p. 128.

[6] Memorandum of respondents Paglangan *et al*., pp. 7-11; Court of Appeals decision in CA-G.R. SP No. 53159, June 22, 2000, pp. 2-4, CA *rollo*, pp. 143-145.

FLGLA No. 542 covering the subject property.[7] Petitioner claims that FLGLA No. 542 has been subsisting since 1983.[8]

On April 10, 1990, private respondents, representing the B'laan and Maguindanao tribes, filed a complaint[9] against petitioner before the Commission on the Settlement of Land Problems (COSLAP) seeking the cancellation of FLGLA No. 542 and the reversion of the land to the indigenous communities.[10]

Private respondents, the Heirs of Datu Abdul B. Pendatun and the Heirs of the Sabal Mula Gawan Clan (respondents-intervenors), claiming to represent the B'laan and Maguindanaoan tribes, aver that they have always possessed the land until the first settlers occupied the area.[11] They claim that among those who took the land by force was petitioner's predecessor, Conrado Alcantara. They narrate that in 1962, some of their tribal leaders tried to re-take the land, but failed because the well-armed settlers repelled them.[12] The incident, in fact, led to the killing of two of their leaders.[13]

Petitioner filed an answer to the complaint questioning the authority of the COSLAP and alleged that it was the secretary of the DENR who should have jurisdiction to administer and dispose of public lands.[14] Petitioner also contended that the COSLAP should suspend the hearing of the case, as the DENR was then hearing a similar controversy.[15]

---

[7] *Id.* at 52.

[8] *Rollo,* p. 12.

[9] Docketed as COSLAP Case No. 98-052.

[10] *Rollo,* pp. 73, 128, 215; *Alcantara v. Commission on the Settlement of Land Problems,* G.R. No. 145838, July 20, 2001, 361 SCRA 664.

[11] Memorandum of respondents Paglangan, *et al.*, pp. 7-9.

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

[13] *Id.* at 9.

[14] Quoted from the COSLAP Decision dated August 3, 1998, CA *rollo,* pp. 128-141, 134-135.

[15] *Id.*

In 1993, despite the pendency of the COSLAP case, and despite opposition from private respondents, petitioner was able to renew FLGLA No. 542 when it expired that year.[16] The renewal given to petitioner was for another 25 years, or until December 31, 2018.[17]

Meanwhile, on October 29, 1997, Congress passed Republic Act No. 8371, or the Indigenous People's Rights Act (IPRA), which was intended to recognize and promote all the rights of the country's Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) within the framework of the Constitution.[18]

On August 3, 1998, the COSLAP rendered its decision, the dispositive portion of which reads as follows:

> WHEREFORE, the foregoing considered, judgment is hereby RENDERED in favour of the complainants and against the Respondents as follows:
>
> 1. Recommends to the Hon. Secretary of DENR the cancellation of respondent's renewed Forest Land Grazing Lease Agreement (FLGLA) No. 542;
>
> 2. Recommending to the DENR to the immediate segregation of the Three Hundred (300) hectares requested by complainants from the Nine Hundred Twenty Three (923) Hectares;
>
> 3. Recommending to the DENR to declare the entire area of the Nine Hundred Twenty Three (923) Hectares, the ancestral lands of the B'laans;
>
> 4. Recommending to the DENR after the Cancellation of FLGLA No. 542, to place in possession the petitioners in order to start cultivation and plant crops for their food and solve the on-going famine and hunger being experience[d] at present by the Lumads.[19]

---

[16] *Rollo,* pp. 73, 129.

[17] *Id*. at 5, 129.

[18] The provisions of the Constitution recognizing the rights of ICCs/IPs are: Article II, Sec. 22; Article VI, Sec. 5, par. 2; Article XII, Sec. 5; Article XIII, Sec. 6; Article XIV, Sec. 17; and Article XVI, Sec. 12.

[19] CA *rollo,* p. 56.

In addition, the COSLAP made the following factual findings:

a) The subject land is the ancestral domain of the complainant indigenous people, whose possession was merely interrupted by the forcible and violent takeover of outside settlers.[20]

b) FLGLA No. 542 was issued by the DENR without giving due process to the indigenous communities as oppositors and in violation of existing laws such as Presidential Decree (P.D.) No. 410 and the Constitution.[21]

The COSLAP maintained that it had jurisdiction over the case by virtue of Executive Order (E.O.) No. 561, the law creating the COSLAP, which provides:

Sec. 3. *Powers and Functions*. — The Commission shall have the following powers and functions:

x x x x x x x x x

2. Refer and follow-up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: *Provided*, That the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:

(a) Between occupants/squatters and pasture lease agreement holders or timber concessioners;
(b) Between occupants/squatters and government reservation grantees;
(c) Between occupants/squatters and public land claimants or applicants;
(d) Petitions for classification, release and/or subdivision of lands of the public domain; and
(e) Other similar land problems of grave urgency and magnitude.[22]

---

[20] *Id*. at 53.

[21] *Id*. at 55.

[22] CA *rollo*, p. 55.

Disagreeing with the ruling of COSLAP, petitioner filed a motion for reconsideration of the decision, which COSLAP denied.

Petitioner then filed before the CA a petition[23] for *certiorari* under Rule 65 to question the decision of the COSLAP. The CA, in its Decision dated June 22, 2000, affirmed *in toto* the decision of the COSLAP.[24]

Aggrieved, petitioner filed a petition for review on *certiorari* before the Court, docketed as G.R. No. 145838.

The Court, in its Decision dated July 20, 2001, upheld the CA and the COSLAP, holding that a) COSLAP had jurisdiction to decide the case; b) FLGLA No. 542 was issued in violation of the law, and; c) the 923 hectares covered by FLGLA No. 542 were ancestral land of the private respondents.[25]

When the decision of the Court attained finality, private respondents filed a motion for execution of the COSLAP's decision. Petitioner filed his opposition to the motion.

On July 29, 2002, the COSLAP issued a writ of execution of its decision, wherein it ordered the Secretary of the DENR to implement the August 3, 1998 decision as affirmed by the Supreme Court.[26]

In a memorandum dated October 19, 2001, the Secretary of the DENR Heherson Alvarez (Sec. Alvarez), upon receipt of the writ of execution and before cancelling FLGLA No. 542, ordered the Office of the Regional Executive Director of DENR Region XII, in Koronadal City, to conduct a review and investigation of FLGLA No. 542.[27] In compliance, the Officer in Charge (OIC)-Regional Executive Director conducted an

---

[23] Docketed as CA-G.R. SP No. 53159.

[24] CA *rollo,* pp. 142-152.

[25] *Alcantara v. Commission on the Settlement of Land Problems, supra* note 10, at 670-671.

[26] CA *rollo,* pp. 66-68.

[27] *Id.* at 161.

investigation and review of the lease under the said FLGLA. One of the participants in the investigation was a representative of petitioner.[28] Following the investigation, the team released its report,[29] dated February 13, 2002, which found violations by petitioner of the terms of the FLGLA, as follows:

1. Failure to establish a food production area within the leased area;

2. Failure to undertake forage improvement within the leased area;

3. Failure to pay the full and or on time Annual Rental/User's Fee/ Government Share pursuant to Sections 28 and 29 of DAO No. 99-36 dated August 10, 1999 Re: Revised Rules and Regulations Governing the Administration, Management, Development and Disposition of Forest Lands Used for Grazing Purposes. Instead the lessee pay (sic) a partial payment of Php18,566 per O.R. [No.] 9640117 dated December 29, 2000 and Php147,680 per O.R. [No.] 9640246 dated February 1, 2001.

4. The 7-years (sic) Grazing Management Plan for CY 1987-1993 of the said lessee was expired. During our investigation, the lessee had failed to present the revised 7-years [sic] Grazing Management Plan for CY 1994-2000 and thereafter pursuant to item No. 23 of the aforesaid contract.

5. Annual report for year 2001 submitted by the lessee revealed that cattle stock of the leased area is only 249 heads; however, the investigation team observed that there were an excess of cattle stock present in the grazing area. The said excess cattle were (sic) allegedly came from [an] adjacent ranch own (sic) by Alejandro Alcantara.

6. The team noticed the presence of squatters within the leased area by [a] certain Asonto, *et al.* and Jumawan, *et al.*

7. FLGLA no. 542 having [sic] an area of 923 hectares which exceed to (sic) the limit of 500 hectares for individual holder [sic] pursuant to Section 3 Article XII of [the] 1987 Philippine

---

[28] *Id.* at 162.

[29] *Id.* at 162-165.

Constitution as implemented by DAO No. 99-36 series of 1999.

8. Pursuant to Memorandum dated December 5, 2001 of the team leader Wahid Amella of CLCSI No. 6 the 478.08 hectares out of the 923 hectares of the leased area is portion of PMD 5338 reverting it to the category of Forest Land. However, no Forestry Administrative Order issued. x x x[30]

Thus, on August 15, 2002, Sec. Alvarez issued an order cancelling FLGLA No. 542 and subjecting the area under the DENR's authority pending final distribution to the concerned communities by the National Commission on Indigenous Peoples (NCIP) or the COSLAP.[31]

Petitioner filed a motion for reconsideration of the order of cancellation. In an order dated November 21, 2002,[32] Sec. Alvarez denied the motion for reconsideration and affirmed the order of cancellation dated August 15, 2002.

On November 22, 2002, Sec. Alvarez issued a memorandum to the Regional Executive Director of DENR Region XII, in Koronadal City, to implement the four recommendations of the COSLAP contained in its Order dated August 3, 1998; and issue the corresponding survey authority.[33]

On November 26, 2002, Community Environment and Natural Resources Officer (CENRO) Andrew B. Patricio Jr. sent a letter to petitioner, advising him to vacate and remove all improvements in the area within 10 days from receipt of the letter.[34] On even date, CENRO Patricio sent another letter which amended the first letter and advised petitioner to vacate the land *immediately*, instead of within 10 days as earlier advised.[35]

---

[30] CA *rollo*, pp. 162-165.

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

[32] *Id.* at 39-41.

[33] *Id.* at 42.

[34] CA *rollo*, p. 102.

[35] *Id.* at 103.

On November 27, 2002, CENRO Patricio issued an Installation Order, which directed the immediate installation and occupation of the area, covered by the cancelled FLGLA No. 542, by the private respondents' indigenous communities.[36]

On December 3, 2002, petitioner filed a petition for *certiorari* before the CA, docketed as CA G.R. SP No. 74166, praying for the annulment and setting aside of the orders of the public respondents, enumerated as follows:

1) The Order dated August 15, 2002 by Sec. Alvarez, which cancelled the FLGLA No. 542 issued to petitioner;

2) The Order dated November 21, 2002 by Sec. Alvarez denying petitioner's motion for reconsideration of the order of cancellation;

3) The Memorandum dated November 22, 2002 by Sec. Alvarez which orders Regional Office XII of the DENR to implement COSLAP's recommendations and to issue the corresponding survey authority;

4) The two Letters dated November 26, 2002 of CENRO Patricio ordering petitioner to immediately vacate and remove improvements in the subject area.

5) The Installation Order dated November 27, 2002 of CENRO Patricio authorizing the installation and occupation of the subject area by private respondents.

On September 24, 2003, the CA rendered its decision, dismissing the petition filed by petitioner Alcantara and ruling that the issues and arguments it raised had all been addressed squarely in the Supreme Court's decision in G.R. No. 145838 which upheld the COSLAP's decision and which had long become final and executory. The CA stated further that the petition was barred by the decision in that case, as both shared the same parties, the same subject matter and the same cause of action.

Hence, herein petition.

---

[36] *Id*. at 104.

Petitioner alleges that when he filed the petition for *certiorari* before the CA below (CA G.R. SP No. 74166), questioning the orders of respondents DENR officials, he "did not seek to have the cancellation of its FLGLA No. 542 reconsidered or reopened, precisely because such cancellation was already covered by a final decision of the Supreme Court." He insists that what he sought was to have a "clear determination of his residual rights after such cancellation in the context of the provisions of the IPRA Law x x x considering that the right to 'lands of the ancestral domain' arose only in view of the IPRA Law and cultural minorities had priorly no right to recover their ancestral lands."[37]

Petitioner's arguments are centered on the following two main issues:

Whether petitioner may continue his enjoyment of the land up to the expiration of FLGA No. 542, or December 31, 2018, based on his alleged residual rights.

Whether respondents DENR officials committed grave abuse of discretion in implementing the COSLAP's decision, which has been upheld by the Supreme Court.

The petition lacks merit.

Petitioner may not enjoy possession and use of the land up to the expiration of FLGLA No. 542, or December 31, 2018, based on his alleged residual rights.

Petitioner's claim that he has residual rights to remain on the property is based on Section 56 of the IPRA, which states:

SEC. 56. *Existing Property Rights Regimes*. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

---

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

The contention of petitioner has no merit. As stated in the Court's decision in G.R. No. 145838,[38] the legal dispute surrounding petitioner's FLGLA No. 542 began in 1990, which was before the IPRA's passage in 1997, and even before the FLGLA was renewed in 1993. Thus, the case is not covered by IPRA, but by other laws existing at the time the COSLAP took cognizance of the case. IPRA also did not cure the legal defects and infirmities of FLGLA No. 542, which were already the subject of controversy by the time the law was passed.

Petitioner further calls for IPRA's application, since "the right to lands of the ancestral domain arose only in view of the IPRA Law and cultural minorities had priorly no right to recover their ancestral lands."[39] Petitioner is utterly mistaken or misinformed. Before IPRA, the right of ICCs/IPs to recover their ancestral land was governed by Presidential Decree (P.D.) No. 410,[40] which declared ancestral lands of national cultural communities as alienable and disposable, and E.O. No. 561,[41] which created the COSLAP. These laws were the bases of the Court's decision in G.R. No. 145838. That the rights of most

---

[38] *Supra* note 10, at 664.

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

[40] Declaring Ancestral Lands Occupied and Cultivated by National Cultural Communities as Alienable and Disposable, and for Other Purposes.

[41] Creating the Commission on the Settlement of Land Problems; among the provisions of this law are:

x x x x x x x x x

WHEREAS, land problems are frequently a source of conflicts among small settlers, landowners and members of cultural minorities;

x x x x x x x x x

Sec. 3. *Powers and Functions*. — The Commission shall have the following powers and functions:

1. Coordinate the activities, particularly the investigation work, of the various government offices and agencies involved in the settlement of land problems or disputes, and streamline administrative procedures to relieve small settlers and landholders and members of cultural minorities of the expense and time-consuming delay attendant to the solution of such problems or disputes; x x x.

ICCs/IPs went largely unrecognized despite these laws was not due to the laws' inadequacies, but due to government indifference and the political inertia in their implementation.[42]

It is also clear that when this Court, in G.R. No. 145838, declared FLGLA No. 542 as illegal and upheld COSLAP's recommendation of its cancellation, petitioner had no right to the land, and consequently, had no right to remain in the use and possession of the subject land. Sec. Alvarez's cancellation of FLGLA No. 542 merely conformed with the Court's findings. The cancellation made by the DENR merely sealed the fact that FLGLA No. 542 should not have been issued in favour of petitioner, in the first place. The COSLAP decision has the force and effect of a regular administrative resolution; hence, it must be implemented and is binding on all parties to the case.[43]

The question whether FLGLA No. 542 is valid has been settled conclusively in G.R. No. 145838 in which the Court made the final finding that FLGLA No. 542 was issued illegally, and that it was made in violation of prevailing laws; and that it was proper for it to be cancelled. The Court ruled, thus:

> The Court of Appeals also stated that based on the records, the land area being claimed by private respondents belongs to the B'laan indigenous cultural community since they have been in possession of, and have been occupying and cultivating the same since time immemorial, a fact which has not been disputed by petitioner. It was likewise declared by the appellate court that FLGLA No. 542 granted to petitioner violated Section 1 of Presidential Decree No. 410 which states that all unappropriated agricultural lands forming part of the public domain are declared part of the ancestral lands of the indigenous cultural groups occupying the same, and these lands are further declared alienable and disposable, **to be distributed exclusively among the members of the indigenous cultural group concerned.**

---

[42] *Cruz v. Secretary of Environment and Natural Resources*, G.R. No. 135385, December 6, 2000, 347 SCRA 128, Separate Opinion of Associate (now Chief) Justice Reynato S. Puno, p. 193.

[43] Executive Order No. 561 (1979), Sec. 3, par. 2.

The Court finds no reason to depart from such finding by the appellate court, it being a settled rule that findings of fact of the Court of Appeals are binding and conclusive upon the Supreme Court absent any showing that such findings are not supported by the evidence on record.[44] (Emphasis supplied)

Petitioner himself admits the finality of that decision, as he states in the petition that he does not "seek to have the cancellation of FLGLA No. 542 reconsidered or reopened, x x x but a clear determination of his residual rights after such cancellation in the context of the provisions of the IPRA Law." However, it appears from a reading of the entire petition that what petitioner means by his "residual rights" is for him to continue enjoying exclusive use of the land until the expiration of FLGLA No. 542 on December 31, 2018.[45]

Again, the decision in G.R. No. 145838 brings out the futility of petitioner's arguments. In no uncertain terms, that decision declared that FLGLA No. 542 was illegally issued. Therefore, from that illegal issuance only flowed an invalid FLGLA, as it is axiomatic in our legal system that acts executed against the laws are void,[46] and that administrative or executive acts, orders and regulations that are contrary to the laws or the Constitution are invalid.[47] Petitioner has no right or interest to speak of, because it is also axiomatic that no vested or acquired right can arise from illegal acts or those that infringe upon the rights of others.[48]

Petitioner's proposition that despite the lengthy litigation that culminated in the invalidation of FLGLA No. 542, he still has the "residual right" to enjoy use of the land until December 31,

---

[44] *Supra* note 10, at 670-671.

[45] *Rollo*, pp. 11, 33.

[46] CIVIL CODE, Art. 5.

[47] CIVIL CODE, Art. 7.

[48] CIVIL CODE, Art. 2254; *Philippine National Bank v. Court of Appeals*, G.R. No. 108870, July 14, 1995, 246 SCRA 304; *Heirs of Gabriel Zari v. Santos*, Nos. L-21213 & L-21214, March 28, 1969, 27 SCRA 651.

2018 is absolutely unacceptable. His stance invites anomaly at best, or ridicule at worst, for it asks this Court to render useless its own final decision in G.R. No. 145838. It also solicits disrespect of all judicial decisions and processes. Instead of ending the litigation, it mocks the painstaking process undertaken by the courts and administrative agencies to arrive at the decision in that case. Petitioner's alleged "residual right" has no legal basis and contradicts his admission that FLGLA No. 542 has been declared invalid by the Court in its decision in G.R. No. 145838. Petitioner has had no residue of any right and no entitlement to the land, from the very beginning.

Petitioner's concern over his alleged rights under the IPRA have all been addressed in G.R. No. 145838. The IPRA was enacted on October 29, 1997. The decision in G.R. No. 145838 was promulgated on July 20, 2001. On that later date, the Court was already aware of IPRA; and when it rendered the decision, it could have expressly declared that petitioner had residual rights under that law if such was the case.[49] The Court applied P.D. No. 410, the law in effect before the IPRA, in finding that FLGLA No. 542 was illegal. This finally disposes of petitioner's claim that he has rights under the IPRA.

In fact, the Court sees petitioner's filing of the present petition as outright forum-shopping, as it seeks to revisit what has become a final and executory decision. As explained in earlier cases, the hallmarks of forum-shopping are:

> Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. Thus, there is forum-shopping when, between an action pending before this Court and another one, there exist: "a) identity of parties, or at least such parties as represent the same interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is

[49] The decision mentions the National Commission on Indigenous Peoples (NCIP), an agency created under the IPRA, in discussing the jurisdiction of the COSLAP. *Supra* note 10, at 667.

successful amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant or lis pendens*." Another case elucidates the consequence of forum-shopping: "[W]here a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest."[50]

Thus, when petitioner raised the issue on whether he should be allowed to remain on the subject land until the expiration of FLGLA No. 542, based on his alleged residual rights, he re-opened an issue already discussed and settled in an earlier case. His use of cleverly disguised language does not hide this fact. Clearly, the Supreme Court decision, in G.R. No. 145838, is *res judicata* in the present case. Therefore, his filing of the present case despite the finality of an earlier identical case makes the present one subject to dismissal.

It has been held that *res judicata* has two concepts: bar by prior judgment and conclusiveness of judgement.[51] The elements under the first concept are the following:

(1) a former final judgment that was rendered on the merits;

(2) the court in the former judgment had jurisdiction over the subject matter and the parties; and,

(3) identity of parties, subject matter and cause of action between the first and second actions;[52]

---

[50] *Prubankers Association v. Prudential Bank and Trust Company*, G.R. No. 131247, January 25, 1999, 302 SCRA 74, 83; *First Philippine International Bank v. Court of Appeals*, January 24, 1996, 252 SCRA 259.

[51] *Laperal v. Katigbak*, No. L-16951, February 28, 1962, 4 SCRA 582, 590; *Tiongson v. Court of Appeals*, No. L-35059, February 27, 1973, 49 SCRA 429, 434; *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 338; *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991; 190 SCRA 732, 739.

[52] *Cayana v. Court of Appeals*, G.R. No. 125607, March 18, 2004, 426 SCRA 10, 20.

On the other hand, for the second concept to operate, or for there to be conclusiveness of judgment, there must be identity of parties and subject matter in the first and second cases, but no identity of causes of action.[53] If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second.[54] Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.[55]

Consequently, the present petition is already barred by *res judicata* under the first concept, since the first and second cases share identical parties, subject matter and cause of action. The shared cause of action is the alleged violation of petitioner's right to remain on the subject land until the expiry date of FLGLA No. 542 on December 31, 2018. As this issue has been settled, there is no more reason to revisit it in the present case. There is no reason for an illegal and cancelled FLGLA to continue in effect or confer any rights on anyone until it expires on December 31, 2018.

Even if the Court accepts petitioner's contention that in the present case, he introduces another cause of action, which is the alleged violation of his right to due process by the haphazard implementation of the COSLAP decision by the respondent DENR officials, it is severely limited by the second concept of *res*

---

[53] *Republic v. Yu,* G.R. No. 157557, March 10, 2006, 484 SCRA 416, 422.

[54] *Nabus v. Court of Appeals, supra* note 51, at 739.

[55] *Rizal Surety and Insurance Company v. Court of Appeals*, G.R. No. 112360, July 18, 2000, 336 SCRA 12, 21-22 citing *Smith Bell and Company (Phils.), Inc. v. Court of Appeals*, G.R. No. 56294, May 20, 1991, 197 SCRA 201, 209.

judicata, i.e., conclusiveness of judgment. Since it is now conclusive and binding in this case that FLGLA No. 542 is illegal and should be cancelled, per the decision in G.R. No. 145838, petitioner could no longer deny that the respondent DENR officials acted legally in cancelling FLGLA No. 542 and in ordering petitioner to vacate the subject land. The public respondents merely acted to implement the COSLAP decision as upheld by the Supreme Court.

Thus, petitioner is left to prove only whether the public respondents acted with grave abuse of discretion in their execution of COSLAP's decision.

There was no grave abuse of discretion in public respondents' implementation of the COSLAP decision.

The Court finds that no grave abuse of discretion was committed by respondent DENR officials in their implementation of the COSLAP decision.

It must be emphasized that FLGLA No. 542 is a mere license or privilege granted by the State to petitioner for the use or exploitation of natural resources and public lands over which the State has sovereign ownership under the Regalian Doctrine.[56] Like timber or mining licenses, a forest land grazing lease agreement is a mere permit which, by executive action, can be revoked, rescinded, cancelled, amended or modified, whenever public welfare or public interest so requires.[57] The determination of

---

[56] CONSTITUTION, Art. XII, Sec. 2; *United Paracale Mining Company, Inc. v. Dela Rosa*, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108; *Republic v. Court of Appeals*, No. L-43938, April 15, 1988, 160 SCRA 228, 239; *Santa Rosa Mining Company, Inc. v. Leido, Jr.*, No. L-49109, December 1, 1987, 156 SCRA 1, 8-9; *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, January 27, 2004, 421 SCRA 148.

[57] *Tan v. Director of Forestry*, No. L-24548, October 27, 1983, 125 SCRA 302, 325; *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 812; *Alvarez v. Picop Resources, Inc.*, G.R. No. 162243, November 29, 2006, 508 SCRA 498; *Republic v. Rosemoor Mining and*

what is in the public interest is necessarily vested in the State as owner of the country's natural resources.[58] Thus, a privilege or license is not in the nature of a contract that enjoys protection under the due process and non-impairment clauses of the Constitution.[59] In cases in which the license or privilege is in conflict with the people's welfare, the license or privilege must yield to the supremacy of the latter, as well as to the police power of the State.[60] **Such a privilege or license is not even a property or property right, nor does it create a vested right; as such, no irrevocable rights are created in its issuance.**[61]

FLGLA No. 542 has not only been withdrawn by executive action to further the public welfare, it has also been declared illegal or unlawful by judicial authorities for clearly violating actual provisions of law. Thus, the DENR was under obligation to effect the cancellation accordingly.

We likewise find no irregularity in the procedure followed by respondent DENR officials in their cancellation of FLGLA No. 542 and their orders for petitioner to vacate the subject land. Petitioner claims that the public respondents were "haphazard" in their cancellation of the FLGLA, thus denying him due process.[62] Contrary to the portrayals by the petitioner, however, the officials were not precipitate in their cancellation of the license and in ordering petitioner to vacate the land. Instead of immediately cancelling FLGLA No. 542, Sec. Alvarez first ordered the Regional Executive Director of DENR to conduct a review and investigation of FLGLA No. 542.[63] Following that

---

Development Corporation, G.R. No. 149927, March 30, 2004, 426 SCRA 516, 530.

[58] *Republic v. Rosemoor Mining and Development Corporation, supra* note 57.

[59] *Id*.

[60] *Id*.

[61] *Tan v. Director of Forestry, supra* note 57.

[62] *Rollo,* pp. 18-19.

[63] *Supra* note 27.

investigation, attended by petitioner's representative, it was found that petitioner committed several violations of the terms of the FLGLA.[64] It was only then that Sec. Alvarez issued the cancellation order.

It is clear from the investigation report that petitioner's FLGLA No. 542 is not only illegal *per se*, for having been issued contrary to the provisions of P.D. No. 410; it has also been rendered illegal by petitioner's blatant violations of DENR regulations and the FLGLA's very own terms and conditions. Thus, the DENR had compelling reasons to cancel the FLGLA.

In conclusion, the Court, in G.R. No. 145838, recognized the inherent right of ICCs/IPs to recover their ancestral land from outsiders and usurpers. Seen by many as a victory attained by the private respondents only after a long and costly effort, the Court, as a guardian and instrument of social justice, abhors a further delay in the resolution of this controversy and brings it to its fitting conclusion by denying the petition.

WHEREFORE, the decision appealed from is *AFFIRMED*. Double costs against petitioner.

SO ORDERED.

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

---

[64] *Supra* note 30.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated July 21, 2008.

EN BANC

[G.R. No. 169008. July 31, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **RAYMUNDA MARTINEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DARAB RULES; AGRARIAN REFORM ADJUDICATOR'S DECISION ON LAND VALUATION ATTAINS FINALITY AFTER LAPSE OF FIFTEEN DAYS; PETITION FOR FIXING JUST COMPENSATION SHOULD BE FILED WITH SPECIAL AGRARIAN COURT (SAC) WITHIN SAID PERIOD. — The Court reiterates its ruling in this case that the *agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period stated in the DARAB Rules*. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period. This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals* and *Department of Agrarian Reform Adjudication Board v. Lubrica*.

2. ID.; ID.; ID.; ID.; ID.; FOR GUIDANCE OF BENCH AND BAR, COURT RULES THAT PETITION FOR FIXING JUST COMPENSATION MUST BE FILED WITH THE SPECIAL AGRARIAN COURT WITHIN THE 15-DAY PERIOD STATED IN THE DARAB RULES. — To resolve the conflict in the rulings of the Court, we now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, *while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules*; *otherwise, the adjudicator's decision will attain finality*. This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition

before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Leonardo N. Salazar for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court are petitioner's September 20, 2007 Motion for Reconsideration[1] and November 8, 2007 Supplemental Motion for Reconsideration,[2] which seek the reversal of the August 14, 2007 Decision[3] in the instant case. To recall, the Court in the challenged decision denied the petition for review on *certiorari* and affirmed the ruling of the Court of Appeals (CA) in CA-G.R. SP No. 83276.

Lifted from the said assailed decision are the following antecedent facts and proceedings:

After compulsory acquisition by the Department of Agrarian Reform (DAR), on November 16, 1993, of respondent Martinez's 62.5369-hectare land in Barangay Agpudlos, San Andres, Romblon, pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 (CARL), petitioner Land Bank of the Philippines (LBP) offered ₱1,955,485.60 as just compensation. Convinced that the proffered amount was unjust and confiscatory, respondent rejected it. Thus, the Department of Agrarian Reform Adjudication Board (DARAB), through its Provincial Agrarian Reform Adjudicator (PARAD) conducted summary administrative proceedings for the preliminary determination of just compensation in accordance with Section 16 (d) of the CARL.

---

[1] *Rollo* (G.R. No. 169008), pp. 411-432.

[2] *Id.* at 437-444.

[3] *Id.* at 391-402.

On September 4, 2002, PARAD Virgilio M. Sorita, finding some marked inconsistencies in the figures and factors made as bases by LBP in its computation, rendered judgment as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> Ordering the Land Bank of the Philippines to pay landowner-protestant RAYMUNDA MARTINEZ for her property covered and embraced by TCT No. T-712 with an area of 62.5369 hectares, more or less, which the Department of Agrarian Reform intends to acquire, the total amount of TWELVE MILLION ONE HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED NINETY TWO and 50/100 Pesos (Php12,179,492.50), in the manner provided for by law.
>
> SO ORDERED.

A petition for the fixing of just compensation docketed as Agrarian Case No. 696 was then filed by LBP's counsel before the Special Agrarian Court (SAC), the Regional Trial Court of Odiongan, Romblon, Branch 82. After filing her answer to the said petition, respondent, contending that the orders, rulings and decisions of the DARAB become final after the lapse of 15 days from their receipt, moved for the dismissal of the petition for being filed out of time. Petitioner opposed the motion.

Meanwhile, respondent, still asserting the finality of PARAD Sorita's decision, filed before the Office of the PARAD a motion for the issuance of a writ of execution, which was eventually granted on November 11, 2003. Ascertaining that the petition before the SAC was filed by LBP 26 days after it received a copy of PARAD Sorita's decision, the Office of the PARAD denied LBP's motion for reconsideration and ordered the issuance of a writ of execution on February 23, 2004. Aggrieved of these developments, LBP, on March 12, 2004, moved to quash the said February 23, 2004 PARAD resolution.

On April 6, 2004, even as the motion to quash was yet unresolved, LBP instituted a petition for *certiorari* before the CA, which was docketed as CA-G.R. SP No. 83276, assailing both the November 11, 2003 and the February 23, 2004 PARAD resolutions. LBP primarily contended that the Office of the PARAD gravely abused its discretion when it issued the writ of execution despite the pendency with the SAC of a petition for the fixing of just compensation.

The CA, finding LBP guilty of forum-shopping for not disclosing the pendency of the *Motion to Quash* dated March 12, 2004, dismissed the petition on September 28, 2004, thus:

> ACCORDINGLY, the present petition for *certiorari* is DISMISSED outright.
>
> Consequently, in view of the dismissal of the above-entitled case, we are no longer in a position to act on the private respondent's motion for execution pending appeal.
>
> Further, this Court, mindful that under Sec. 5, Rule 7, of the 1997 Rules of Civil Procedure, willful and deliberate forum-shopping constitutes direct contempt of court and cause for administrative sanctions, which may both be resolved and imposed in the same case where the forum shopping is found, WARNS the counsel of record of the petitioner that a repetition of a similar act of submitting a false certification shall be dealt with most severely.
>
> SO ORDERED.

Not persuaded by LBP's motion for reconsideration, the appellate court denied the same on July 15, 2005. Necessarily, LBP, through its legal department, elevated the case before this Court on September 9, 2005 via a petition for review on *certiorari* under Rule 45, contending, among others, that it did not commit deliberate forum shopping for what it filed with the Office of the PARAD was a motion to quash, which is not an initiatory pleading; and the decision of the PARAD cannot be executed due to the pending petition for fixing of just compensation with the SAC.

On September 14, 2005, we issued a temporary restraining order (TRO) restraining the appellate court and the DAR adjudicators from implementing the November 11, 2003 and the February 23, 2004 resolutions.

For her part, respondent contends that petitioner has committed forum-shopping when it filed a *certiorari* petition without first awaiting the resolution by the Office of the PARAD of the motion to quash; and that petitioner has lost its standing to sue considering that it is being represented by its lawyers and not the Office of the Government Corporate Counsel (OGCC). [Citations omitted.][4]

[4] *Id*. at 392-395.

Three primordial issues were then resolved by the Court in the said decision — (1) whether or not petitioner could file its appeal solely through its legal department; (2) whether or not petitioner committed forum shopping; and (3) whether or not the Provincial Agrarian Reform Adjudicator (PARAD) gravely abused his discretion when he issued a writ of execution despite the pendency of LBP's petition for fixing of just compensation with the Special Agrarian Court (SAC).

The Court went on to rule that the petition for review on *certiorari* could not be filed without the Office of the Government Corporate Counsel (OGCC) entering its appearance as the principal legal counsel of the bank or without the OGCC giving its conformity to the LBP Legal Department's filing of the petition. The Court also found petitioner to have forum-shopped when it moved to quash the PARAD resolutions and at the same time petitioned for their annulment via *certiorari* under Rule 65. Most importantly, the Court ruled that petitioner was not entitled to the issuance of a writ of *certiorari* by the appellate court because the Office of the PARAD did not gravely abuse its discretion when it undertook to execute the September 4, 2002 decision on land valuation. The said adjudicator's decision attained finality after the lapse of the 15-day period stated in Rule XIII, Section 11 of the Department of Agrarian Reform Adjudication Board (DARAB) Rules of Procedure.

Dissatisfied with our ruling, petitioner successively filed, as aforesaid, the September 20, 2007 Motion for Reconsideration[5] and the November 8, 2007 Supplemental Motion for Reconsideration.[6] In both motions, petitioner contends that its lawyers are authorized to appear in the instant case for they have been issued a letter of authority by the OGCC on April 17, 2006; that it did not commit deliberate forum shopping; that the Provincial Agrarian Reform Adjudicator (PARAD) gravely abused his discretion in issuing the writ of execution to implement his decision; that respondent's defense of *res judicata* or the alleged finality of the PARAD's decision was never pleaded in

[5] *Supra* note 1.

[6] *Supra* note 2.

her answer, hence, was already deemed waived; that the PARAD had no jurisdiction to issue the writ of execution due to the pending petition for determination of just compensation with the SAC; and that the Court's August 14, 2007 Decision in this case is contrary to its October 11, 2007 Decision in *Land Bank of the Philippines v. Suntay, G.R. No. 157903* on the issue of whether the petition for determination of just compensation was filed out of time.

Respondent, in her January 24, 2008 Comment,[7] counters, among others, that the filing of the said motions is only dilatory considering that the arguments raised therein have already been answered by the Court in the decision sought to be reconsidered.

The Court agrees with respondent's contention and denies petitioner's motions.

Indeed, except for the alleged conflict of the August 14, 2007 Decision with that promulgated on October 11, 2007 in G.R. No. 157903 [*LBP v. Suntay*], the grounds raised by petitioner in the motions are identical to those stated in its previous pleadings. And these have already been considered and sufficiently passed upon by the Court in the August 14, 2007 Decision.

On the supposedly conflicting pronouncements in the cited decisions, the Court reiterates its ruling in this case that the *agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period stated in the DARAB Rules*. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period. This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals*[8] and *Department of Agrarian Reform Adjudication Board v. Lubrica*.[9]

In *Philippine Veterans Bank*, decided in 2000 through the pen of Justice Vicente V. Mendoza, the Court ruled that the trial court correctly dismissed the petition for the fixing of just

[7] *Rollo*, pp. 448-452.

[8] 379 Phil. 141, 148-149 (2000).

[9] G.R. No. 159145, April 29, 2005, 457 SCRA 800, 812-813.

compensation because it was filed beyond the 15-day period provided in the DARAB Rules.

In *Lubrica*, decided in 2005 through the pen of Justice Dante O. Tinga, the Court, citing *Philippine Veterans Bank*, ruled that the adjudicator's decision had already attained finality because LBP filed the petition for just compensation beyond the 15-day reglementary period. Incidentally, Josefina Lubrica is the assignee of Federico Suntay whose property is the subject of the aforementioned October 11, 2007 Decision in *LBP v. Suntay*.

Following settled doctrine, we ruled in this case that the PARAD's decision had already attained finality because of LBP's failure to file the petition for the fixing of just compensation within the 15-day period.

This ruling, however, as correctly pointed out by petitioner, runs counter to the Court's recent decision in *Suntay* [the motions for reconsideration in *Suntay* were denied with finality in the January 30, 2008 Resolution of the Court[10]], in which the Court ruled that the trial court *erred* in dismissing the petition for determination of just compensation on the ground that it was filed out of time. The Court in that case stressed that the petition was not an appeal from the adjudicator's final decision but an original action for the determination of just compensation.

We, however, promulgated our decision in this case ahead of *Suntay*. To reiterate, this case was decided on August 14, 2007, while *Suntay* was decided two months later, or on October 11, 2007. *Suntay* should have then remained **consistent** with our ruling, and with the doctrines enunciated in *Philippine Veterans Bank* and in *Lubrica*, especially considering that Lubrica was the representative of Suntay in the *Suntay* case.

The Court notes that the *Suntay* ruling is based on *Republic of the Philippines v. Court of Appeals*,[11] decided in 1996 also through the pen of Justice Vicente V. Mendoza. In that case, the Court emphasized that the jurisdiction of the SAC is original

---

[10] *Rollo* (G.R. No. 157903), pp. 863-865.

[11] 331 Phil. 1070 (1996).

and exclusive, not appellate. *Republic*, however, was decided at a time when Rule XIII, Section 11 was not yet present in the DARAB Rules. Further, *Republic* did not discuss whether the petition filed therein for the fixing of just compensation was filed out of time or not. The Court merely decided the issue of whether cases involving just compensation should first be appealed to the DARAB before the landowner can resort to the SAC under Section 57 of R.A. No. 6657.

To resolve the conflict in the rulings of the Court, we now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, *while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules*; *otherwise, the adjudicator's decision will attain finality*. This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.

IN THE LIGHT OF THE FOREGOING DISQUISITIONS, the Court *DENIES WITH FINALITY* petitioner's September 20, 2007 Motion for Reconsideration and the November 8, 2007 Supplemental Motion for Reconsideration.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

Tinga, J., C.J. Puno certifies that *J.* Tinga voted in favor of the *ponencia*.

Azcuna, J., on official leave.

Reyes, J., on leave.

THIRD DIVISION

[G.R. No. 180425. July 31, 2008]

FELIX RAIT, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; FINDINGS OF FACT OF TRIAL COURT IF AFFIRMED BY THE COURT OF APPEALS ARE CONCLUSIVE ON THE SUPREME COURT. — First, the findings of fact of the trial court, especially when affirmed by the CA, are conclusive upon this Court. In this case, the trial court found the acts imputed to petitioner to have been duly proven by the evidence beyond reasonable doubt. We are bound by such finding.

2. CRIMINAL LAW; ATTEMPTED RAPE; WHEN PRESENT. — Under Article 6, in relation to Article 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, and does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.

3. ID.; ID.; CASE AT BAR. — Unlike in *Baleros*, the acts of petitioner clearly establish his intention to commence the act of rape. Petitioner had already successfully removed the victim's clothing and had inserted his finger into her vagina. It is not empty speculation to conclude that these acts were preparatory to the act of raping her. Had it not been for the victim's strong physical resistance, petitioner's next step would, logically, be having carnal knowledge of the victim. The acts are clearly "the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made."

4. ID.; FELONIES; ATTEMPTED FELONY; OVERT ACT; EXPLAINED. — This Court has held that an overt or external act — is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete

termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.

APPEARANCES OF COUNSEL

Bacal Law Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision[1] in CA-G.R. CR No. 23276 dated January

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ramon R. Garcia, concurring; *rollo*, pp. 36-43.

26, 2006 and its Resolution[2] dated October 10, 2007. The Court of Appeals upheld the Decision[3] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 20, wherein petitioner Felix Rait was convicted of attempted rape.

On November 18, 2003, AAA[4] asked permission from her parents to go to her brother's house in Nazareth Street to get her athletic pants. When she was there, her brother requested her to buy cigarettes from a nearby store. While in the store, petitioner Rait and one Janiter Pitago arrived. The two ordered beer and invited AAA to join them. She initially refused. However, when Aurora Raez, another neighbor, joined them, AAA was forced to drink beer. After drinking a glass of beer, she became drunk. When she was feeling weak, petitioner and his co-accused brought her out to 20th and 21st Streets where the petitioner and his co-accused brought her to the side of the street and forcibly removed her pants and underwear. Petitioner then forcibly inserted his finger into her vagina. AAA tried to shout for help but petitioner covered her mouth while Pitago held her feet. Petitioner was on top of her and about to insert his penis into her vagina but she was able to kick both men and run away.[5]

AAA then went to her brother's house and related the incident to him. Her brother went out to find petitioner. When AAA's brother did find petitioner, he tried to beat petitioner with a stick but the latter ran away. AAA and her brother then went home to their parents' house in Tambo, Macasandig, Cagayan de Oro City and told them what happened. At about 3:00 a.m. of November 19, AAA was accompanied by her brother and

---

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring; *id*. at 44-45.

[3] Penned by Judge Alejandro M. Velez, *id*. at 66-77.

[4] Per Republic Act No. 9262, the *Anti-Violence Against Women and Their Children Act of 2004* and Republic Act No. 7610, the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] RTC Decision, *rollo*, p. 67.

stepmother to *Operation Kahusay ug Kalinaw* to report the incident. They also went to *Bombo Radyo* to appeal for help in apprehending petitioner. From there, they went to the Provincial Hospital for AAA to undergo medical examination.[6] They then proceeded to the police station where the incident was recorded on the police blotter under Entry No. 8085.[7]

On May 26, 1994, Rait and Pitago were charged in an Information, which reads:

> That on or about November 19, 1993, at 2:00 o'clock in the morning, more or less (sic) at Nazareth, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there, wilfully (sic), unlawfully and feloniously commence the commission of the crime of Rape, directly by overt acts, on the person of a [17-year-old] minor, [AAA], by then and there (sic), with force and against the latter's will while she was in a state of intoxication, touching her breasts, removing her panty, holding her feet (by Janiter Pitago) and lying on top of her (by Felix Rait), but did not perform all the acts of execution which would produce the crime of Rape, by reason of some cause other than his own spontaneous desistance, that in when (sic) offended party was able to kick them and the two ran away.
>
> Contrary to and in violation of Article 335 in relation to Article 6, of the Revised Penal Code.

After trial, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, this court hereby finds the accused Felix Rait guilty beyond reasonable doubt of the crime of Attempted Rape.
>
> The basic penalty for Attempted Rape under Article 335 is two degrees lower than *Reclusion Perpetua* or *Prision Mayor* in its full extent. Applying the Indeterminate Sentence Law, the accused is entitled to a penalty lower to (sic) *Prision Mayor* or that of *Prision*

---

[6] *Id*. at 67-68.

[7] *Id*. at 69.

Correccional in its full extent, (sic) hence, accused FELIX RAIT is sentenced to an Indeterminate Sentence of *PRISION CORRECCIONAL* in its medium period as the minimum to *PRISION MAYOR* in its medium period as the maximum under the same law.

The accused is entitled to his credit in full (sic) in his favor the period during which he was under preventive imprisonment pending litigation.

Accused herein is further ordered to pay the complainant the sum of ₱20,000.00 pesos (sic) as indemnity for Attempted rape to the complainant (sic); ₱5,000.00 pesos (sic) for actual damages and expenses and to pay the costs.

SO ORDERED.[8]

Petitioner appealed the judgment to the CA-Cagayan de Oro. Petitioner alleged that the RTC erred in: (1) giving credence to the prosecution witnesses despite their inconsistent, contradictory and incredible testimonies; (2) in not finding that petitioner was implicated in the case by reason of spite and vengeance; and (3) in finding petitioner guilty beyond reasonable doubt of the crime of attempted rape despite the failure of the prosecution to prove his guilt.[9]

The CA denied the appeal and affirmed the trial court's ruling in all respects.[10] Petitioner's motion for reconsideration was likewise denied.

Petitioner now comes before this Court on the following grounds:

THE HONORABLE COURT OF APPEALS IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE PETITIONER FOR THE CRIME OF ATTEMPTED RAPE, DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW ON RAPE AND JURISPRUDENCE ON THE MATTER.

THAT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN [NOT DOWNGRADING] THE CRIME OF

---

[8] *Id*. at 77.

[9] *Id*. at 38.

[10] *Id*. at 42.

ATTEMPTED RAPE TO ACTS OF LASCIVIOUSNESS IF NOT THAT OF UNJUST VEXATION.[11]

Petitioner argues that he should be acquitted of the crime of attempted rape. If he is to be found guilty of any offense, he puts forward the theory that based on this Court's ruling in *Baleros, Jr. v. People*,[12] he should be convicted only of unjust vexation.

The petition is bereft of merit. We deny the Petition for Review.

First, the findings of fact of the trial court, especially when affirmed by the CA, are conclusive upon this Court. In this case, the trial court found the acts imputed to petitioner to have been duly proven by the evidence beyond reasonable doubt. We are bound by such finding.

On the strength of those proven facts, the next question is: what was the offense committed?

Petitioner argues that this Court's ruling in *Baleros* is applicable to his case.

In *Baleros*, accused was convicted of attempted rape. The CA sustained the conviction. Upon review, this Court reversed the conviction and found accused guilty of light coercion. The Court declared:

> Expounding on the nature of an attempted felony, the Court, speaking thru Justice Claro M. Recto in *People vs. Lamahang*, stated that "*the attempt which the Penal Code punishes is that which has a logical connection to a particular, concrete offense; that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation*." Absent the unavoidable connection, like the logical and natural relation of the cause and its effect, as where the purpose of the offender in performing an act is not certain, meaning the nature of the act in relation to its objective is ambiguous, then what

---

[11] *Id.* at 20.

[12] G.R. No. 138033, February 22, 2006, 483 SCRA 10.

obtains is an attempt to commit an indeterminate offense, which is not a juridical fact from the standpoint of the Penal Code.

There is absolutely no dispute about the absence of sexual intercourse or carnal knowledge in the present case. The next question that thus comes to the fore is whether or not the act of the petitioner, *i.e.*, the pressing of a chemical-soaked cloth while on top of Malou, constitutes an overt act of rape.

Overt or external act has been defined as some *physical activity or deed*, indicating the intention to commit a particular crime, *more than* a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will *logically* and *necessarily* ripen into a concrete offense.

Harmonizing the above definition to the facts of this case, it would be too strained to construe petitioner's act of pressing a chemical-soaked cloth in the mouth of Malou which would induce her to sleep as an overt act that will logically and necessarily ripen into rape. As it were, petitioner did not commence at all the performance of any act indicative of an intent or attempt to rape Malou. It cannot be overemphasized that petitioner was fully clothed and that there was no attempt on his part to undress Malou, let alone touch her private part. For what reason petitioner wanted the complainant unconscious, if that was really his immediate intention, is anybody's guess. The CA maintained that if the petitioner had no intention to rape, he would not have lain on top of the complainant. Plodding on, the appellate court even anticipated the next step that the petitioner would have taken if the victim had been rendered unconscious. Wrote the CA:

> The shedding of the clothes, both of the attacker and his victim, will have to come later. His sexual organ is not yet exposed because his intended victim is still struggling. Where the intended victim is an educated woman already mature in age, it is very unlikely that a rapist would be in his naked glory before even starting his attack on her. He has to make her lose her guard first, or as in this case, her unconsciousness.

At bottom then, the appellate court indulges in plain speculation, a practice disfavored under the rule on evidence in criminal cases.

For, mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt.

x x x x x x x x x

Lest it be misunderstood, the Court is not saying that petitioner is innocent, under the premises, of any wrongdoing whatsoever. The information filed against petitioner contained an allegation that he forcefully covered the face of Malou with a piece of cloth soaked in chemical. And during the trial, Malou testified about the pressing against her face of the chemical-soaked cloth and having struggled after petitioner held her tightly and pinned her down. Verily, while the series of acts committed by the petitioner do not determine attempted rape, as earlier discussed, they constitute unjust vexation punishable as light coercion under the second paragraph of Article 287 of the Revised Penal Code. In the context of the constitutional provision assuring an accused of a crime the right to be informed of the nature and cause of the accusation, it cannot be said that petitioner was kept in the dark of the inculpatory acts for which he was proceeded against. To be sure, the information against petitioner contains sufficient details to enable him to make his defense. As aptly observed by then Justice Ramon C. Aquino, there is no need to allege malice, restraint or compulsion in information for unjust vexation. As it were, unjust vexation exists even without the element of restraint or compulsion for the reason that this term is broad enough to include any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate an innocent person. The paramount question is whether the offender's act causes annoyance, irritation, torment, distress or disturbance to the mind of the person to whom it is directed. That Malou, after the incident in question, cried while relating to her classmates what she perceived to be a sexual attack and the fact that she filed a case for attempted rape proved beyond cavil that she was disturbed, if not distressed by the acts of petitioner.[13]

We are not persuaded by petitioner's argument. Several facts attendant to this case distinguish it from *Baleros*, enough to convince us to arrive at a different conclusion.

Unlike in *Baleros*, the acts of petitioner clearly establish his intention to commence the act of rape. Petitioner had already

---

[13] *Baleros v. People*, *id.* at 27-30. (Citations omitted).

successfully removed the victim's clothing and had inserted his finger into her vagina. It is not empty speculation to conclude that these acts were preparatory to the act of raping her. Had it not been for the victim's strong physical resistance, petitioner's next step would, logically, be having carnal knowledge of the victim. The acts are clearly "the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made."[14]

Under Article 6, in relation to Article 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, and does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.[15]

This Court has held that an overt or external act —

> is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need

---

[14] *People v. Mendoza*, G.R. Nos. 152589 & 152758, January 31, 2005, 450 SCRA 328, 334, citing *People v. Lizada*, 396 SCRA 62, 95 (2003).

[15] *People v. Campuhan*, 385 Phil. 912, 927 (2000).

not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.[16]

Thus, we find that petitioner was correctly convicted of attempted rape.

A final observation. We note that the trial court's Decision sentenced petitioner to a prison term without specifying the period this sentence covers. We will rectify this error even as we affirm petitioner's conviction.

The penalty for attempted rape is *prision mayor*, or two degrees lower than *reclusion perpetua*, the penalty for consummated rape. Petitioner should be sentenced to an indeterminate sentence the minimum of which is in the range of *prision correccional*, or within six months and one day to six years, and the maximum of which is *prision mayor* medium, or within eight years and one day to ten years. In this case, the trial court sentenced petitioner to "an Indeterminate Sentence of *PRISION CORRECCIONAL* in its medium period, as the minimum, to *PRISION MAYOR* in its medium period, as the maximum."

WHEREFORE, the foregoing premises considered, the Court of Appeals Decision in CA-G.R. CR No. 23276 dated January 26, 2006 and its Resolution dated October 10, 2007 affirming petitioner's conviction for *ATTEMPTED RAPE* are *AFFIRMED WITH MODIFICATION*. The petitioner is sentenced to an indeterminate sentence of **two (2) years, four (4) months, and one (1) day of *prision correccional* medium,** as minimum, to **ten (10) years of *prision mayor* medium**, as its maximum. In all other respects, the trial court's Decision is *AFFIRMED*.

SO ORDERED.

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

---

[16] *People v. Lizada, supra* note 14, at 94-95. (Citations omitted).

INDEX

INDEX

ALIBI

Defense of — Cannot prevail over the categorical testimony of the witnesses. (People *vs*. Arenas, G.R. No. 172974, July 28, 2008) p. 252

— The accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed but it was impossible for him to have been at the scene of the crime at the time of its commission. (People *vs*. Gonzales, G.R. No. 180448, July 28, 2008) p. 412

(People *vs*. Bulasag, G.R. No. 172869, July 28, 2008) p. 243

APPEALS

Appeal in criminal cases — When and how to be taken. (Tamayo *vs*. People, G.R. No. 174698, July 28, 2008) p. 306

— Whole case is open for review in all aspects, including those not raised by the parties. (People *vs* Tambis, G.R. No. 175589, July 28, 2008) p. 339

Appellate docket fees — Non-payment thereof does not automatically result in the dismissal of the appeal; dismissal is discretionary on the part of the appellate court. (Acaylar, Jr. *vs*. Harayo, G.R. No. 176995, July 30, 2008) p. 600

— Payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. (Heirs of Fortunata Muyalde *vs*. Reyes, Jr., G. R. No. 173354, July 28, 2008) p. 257

Factual findings and conclusion of law by the trial court — Accorded great weight and respect when supported by evidence; exceptions. (Rait *vs*. People, G.R. No. 180425, July 31, 2008) p. 747

(Abadiano *vs*. Sps. Martir, G.R. No. 156310, July 31, 2008) p. 647

(People *vs*. Mateo, G.R. No. 179478, July 28, 2008) p. 390

(Aneco Realty and Dev't. Corp. *vs*. Landex Dev't. Corp., G.R. No. 165952, July 28, 2008) p. 183

. Re

PRESCRIPTION OF ACTIONS

Action for reconveyance — Prescribes in 10 years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property. (Daclag *vs.* Macahilig, G.R. No. 159578, July 28, 2008) p. 138

Concept — Application. (Unlad Resources Dev't. Corp. *vs.* Dragon, G.R. No. 149338, July 28, 2008) p. 61

PRESUMPTIONS

Presumption of regularity of public documents — Error in the notarial inscription would have meant that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. (Abadiano *vs.* Sps. Martir, G.R. No. 156310, July 31, 2008) p. 647

— Notarized deed of absolute sale is a public document which has in its favor the presumption of regularity; burden of proof to overcome the presumption lies on the party contesting such execution. (Dailisan *vs.* CA, G.R. No. 176448, July 28, 2008) p. 346

— Proof of genuineness and due execution is not necessary. (Abadiano *vs.* Sps. Martir, G.R. No. 156310, July 31, 2008) p. 647

Presumption of regularity in the performance of official duty — Applied in entrapment cases by police officers. (People *vs.* Bohol, G.R. No. 171729, July 28, 2008) p. 232

— Elucidated. (People *vs.* Naquita, G.R. No. 180511, July 28, 2008) p. 422

— Exceptions, when not applicable. (People *vs.* Mateo, G.R. No. 179478, July 28, 2008) p. 390

— Presumed in favor of police officers in the absence of clear and convincing proof to the contrary. (People *vs.* Mateo, G.R. No. 179036, July 28, 2008) p. 369

— Satisfactory unless controverted. (Rodrin *vs.* GSIS, G.R. No. 162837, July 28, 2008) p. 168

— Specifically requires that a certification attesting to the lack of any lawyer or notary public in the said municipality or circuit be made in a notarized document. *(Id.)*

TAXES

Documentary stamp tax — It is not the pawn ticket that creates the pawnshop's obligation to pay documentary stamp tax but the exercise of the privilege to enter into a contract of pledge. (First Planters Pawnshop, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008) p. 584

TENANCY RELATIONSHIP

Existence of — Elements. (Cornes *vs*. Leal Realty Centrum Co., Inc., G.R. No. 172146, July 30, 2008) p. 529

(Mabagos *vs*. Maningas, G.R. No. 168252, July 28, 2008) p. 212

Tenants — Defined. (Cornes *vs*. Leal Realty Centrum Co., Inc., G.R. No. 172146, July 30, 2008) p. 529

TREACHERY

As a qualifying circumstance — May still be appreciated even though the victim was forewarned of the danger to his person if the execution of the attack made it impossible for him to defend himself or to retaliate. (People *vs.* Tambis, G.R. No. 175589, July 28, 2008) p. 339

As an aggravating circumstance — When appreciated. (People *vs*. Arenas, G.R. No. 172974, July 28, 2008) p. 252

TRUSTS

Constructive trust — Registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance. (Pasiño *vs*. Dr. Monterroyo, G.R. No. 159494, July 31, 2008) p. 703

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

Ricardo J. Francisco, Evidence, 1996 Third Edition, Rex Printing Company, Inc., Philippines, p. 84 227
V. Francisco, The Revised Rules of Court in the Philippines, p. 305 (1997), Part I, VII 500
Pamaran, M.R., The 1985 Rules on Criminal Procedure Annotated (2001), pp. 153-154 695
Florenz D. Regalado, Remedial Law Compendium, Volume II (2004 Ed.), p. 632 318
Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1997 Ed., pp. 180- 181 80
Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1992 Ed., p. 44 77

II. FOREIGN AUTHORITIES

A. BOOKS

1 Am. Jur., Sec. 97 701
19 Am. Jur., 343-344 664
Black's Law Dictionary, 6th Ed., p. 1306 79