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OF THE

PHILIPPINES

FROM

AUGUST 6, 2008 TO AUGUST 12, 2008

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MANILA
2013

Prepared
by

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Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 2008-05-SC. August 6, 2008]

RE: FREQUENT UNAUTHORIZED ABSENCES OF MS. NAHREN D. HERNAEZ

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION (CSC) MEMORANDUM CIRCULAR NO. 4; HABITUAL ABSENTEEISM; CASE AT BAR. —** Under Civil Service Commission (CSC) Memorandum Circular No. 4, Series of 1991, an officer or employee in the civil service shall be considered habitually absent, if he or she incurs unauthorized absences exceeding the allowable 2.5 monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months. In the instant case, Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 monthly leave credits for at least three (3) months in a semester particularly, the months of September, November, and December 2007. Records show that for the month of September 2007, out of her ten (10) leave applications, three (3) days were disapproved. Out of her six (6) leave applications for November of the same year, five (5) days were likewise disapproved. For December 2007, she did not report for work and incurred 17.624 days disapproved sick leave applications. She also had nine (9) unauthorized absences for the month of January 2008. Ms. Hernaez also incurred fifteen (15) unauthorized leaves in February 2007,

eight (8) unauthorized leaves in March 2007 and two (2) unauthorized leaves in June 2007. Although her absences within said period fell short of the definition of habitual absenteeism, she still is liable for absenteeism under CSC MC No. 04, Series of 1991.

2. **ID.; ID.; COURT EMPLOYEES; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE; ABSENCE WITHOUT LEAVE FOR A PROLONGED PERIOD OF TIME; PROPER PENALTY IN CASE AT BAR. —** In *Layao, Jr. v. Manatad,* this Court held that a court employee's absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal. Due to the nature and functions of their office, officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and efficient use of every moment for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible. Section 52 of the Uniform Rules on Administrative Cases in the Civil Service penalizes habitual absenteeism and conduct prejudicial to the best interest of the service with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Considering that respondent Hernaez is found liable for two or more charges, the penalty corresponding to the most serious charge, to be meted in its maximum period, shall be imposed. x x x On July 1, 2008, the Court *En Banc* approved the OAS recommendation dropping respondent from the rolls for AWOL. Since respondent has already been dropped from the rolls, the penalty of suspension is no longer practicable. x x x Records bear out that respondent has been suffering from a variety of illnesses. Under Section 53(a) of the Uniform Rules, the physical fitness or unfitness, as in this case, of respondent may be considered a mitigating circumstance in the determination of the penalties to be imposed. Thus, a fine of Five Thousand Pesos (₱5,000.00) is more proper and reasonable.

RESOLUTION

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

MS. Nahren D. Hernaez, Utility Worker II, Maintenance and General Services Division, detailed to the Personnel Division, Office of Administrative Services (OAS), is administratively charged with habitual absenteeism.

The Antecedents

In her Report[1] dated March 26, 2008, Gloria P. Kasilag, Supervising Judicial Staff Officer, OAS, brought to the attention of the Complaint and Investigation Division, this Court, for appropriate action the matter of habitual absenteeism of the said utility worker, as follows:

Year 2007 MONTH	Number of Days Absent	Year 2007 MONTH	Number of Days Absent
January		July	
February	15	August	
March	8	September	
April		October	
May		November	5
June	2	December	17.624

On April 3, 2008, Atty. Eden Candelaria, Deputy Clerk of Court and Chief Administrative Officer, OAS, submitted a report and recommendation dated April 1, 2008:

The Civil Service Law allows only a maximum of 2.5 unauthorized absences in a month, any excess for at least three (3) months in a semester or at least three (3) consecutive months during the year

---

[1] Report on Habitual Absenteeism of Gloria P. Kasilag, SC Chief Judicial Staff Officer, Employee Leave Division, OAS.

has a corresponding sanction as circumscribed by the rules. Pertinent to this is **Section 22(q) of the Omnibus Rules Implementing Book V of the Administrative Code of 1987**, reiterated in **Memorandum Circular No. 4, series of 1991**, which reads as follows:

> *A. "HABITUAL ABSENTEEISM*
>
> *1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year."*

Ms. Hernaez's *Leave Card* shows that for the month of September 2007, out of ten (10) leave applications, three (3) days were disapproved covering the period September 17-19, 2007. For November 2007, out of six (6) leave applications, five (5) days were disapproved. For December 2007, she did not report for work, and her subsequent sick leave applications were disapproved for that month, which totaled 17.624 days.

Once the leave application is recorded in the leave card of the personnel concerned, the Leave Division, this Office is under no obligation to retain long duration leave applications that have been acted upon, this is to prevent congestion of unnecessary papers which clog office space/s. Ms. Hernaez's *leave application* for the month of September is no longer available as her application had already been reflected in the leave card. Among the leave applications that are still with the Office of Administrative Services are that of November, December 2007, and January 2008, and it shows the following actions taken by the concerned immediate supervisor:

> *Undated Sick Leave Application* for absence on November 29, 2007 with the reason: she went to a doctor with her daughter because of hyperacidity. The wordings of the action taken where: "*disapproved due to late filing, after thought, same reason as 11/26 – vomiting*."
>
> *Sick Leave Application* dated December 17, 2007 for absences on December 3-7, 190-14, 2007 (10 days) with Medical Certificate dated **December 5** advising medication and rest for 8 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "*Disapproved sick*

> *leave application has been overused and abused. No actual medical intervention has happened. Habitual*."

Due to her straight absences since November 29, 2007, a Memorandum dated January 7, 2008 was sent to Ms. Nahren D. Hernaez and received by the latter on January 8, 2008, directing her to return to work and undergo medical check up at the Supreme Court Clinic. She neither reported for work nor submitted herself for medical check up at the SC Clinic.

Ms. Hernaez filed a *Sick Leave Application* dated January 16, 2008 for absences on December 17-21, 26-28, January 7-11, 14 (14 days) with a Medical Certificate dated January 5, 2008, advising medication and rest for 9 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "*Disapproved, no medical certificate for the period 17-21; 26-28, 2007. For the period January 7-11, 14, 2008, same medical certificate conveniently issued on December 5, 2007*."

The *Special Leave Application* dated January 16, 2008 for absences on January 2, 3 & 4, 2008 (3 days) was belatedly filed. The wordings of the action taken where: "*disapproved, application of a scheme to circumvent leave law*."

Perusing the previous Memoranda to Ms. Nahren D. Hernaez shows:

> *1) On January 16, 2003, she was sent a letter by this office to explain within five (5) days why she should not be dropped from the roll for having been continuously absent from office since December 20, 2002.*
>
> *2) A Memorandum by this Office dated March 21, 2006 to Ms. Nahren D. Hernaez also cited her act of reporting irregularly to the prejudice of her assigned task.*
>
> *3) As a result of incurring absences more frequently than the allowable number of days per month from January to August 2006, a Memorandum dated September 7, 2006 enjoined her to report to office regularly and sternly warned that any further incursion of absences shall constrain the office to file the necessary administrative charges.*

It appears from Ms. Hernaez's record that sick leave applications have been abused and overused even prior to the report of the Leave

division, this Office. The approving authority of leave applications within OAS is duty bound to verify and satisfy for herself the veracity of sick leave applications. This is in accord with No. 2 of Supreme Court Administrative Circular No. 14-2002 dated March 18, 2002, to wit:

> *In case of claim of ill health, heads of department or agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright.*

The aforesaid Supreme Court Administrative Circular jibes with the CSC ruling that:

> *x x x when a sick leave of absence is filed by an employee, the head of office does not have any other choice but to grant the same. In which case, it becomes now a ministerial duty on the part of the agency to grant the application for sick leave,* ***the only exception, is when the head of agency entertains doubt on the employee's claim of ill health. In such case, it is incumbent upon the head of agency to determine or verify the veracity of the employee's claim of ill health****. On the other hand, leave of absence for any other reason than illness of an officer or employee is discretionary on the part of the head of agency to approve the same.*

Except that, verification of Court employees' sick leave application's authenticity is lodged with **heads of department** of agencies and not on the head of the agency. In Ms. Hernaez' case, the Chief of Office where she is under supervision of, or his/her representative, the Assistant Chief of Office is left with this task.

Ms. Hernaez submitted a Medical Certificate showing that she has a benign postural persistent vertigo. This is actually treatable with the *appropriate repositioning maneuver* of the head/eyes from left to right to prevent/reduce dizziness that transpired in a given time. *Benign paroxysmal positional vertigo (BPPV is based on the patient's history and eye movements evoked during positional tests. x x x Once the involved canal is identified, BPPV may be effectively treated with a physical maneuver. The maneuvers may be performed by a clinician or by patients themselves.*

Benign paroxysmal positional vertigo is the most common cause of peripheral vertigo. This type of vertigo occurs when you move the position of your head in a sudden manner. The attacks last up to a minute. This kind of vertigo results from the dislodgment of normal crystalline structures in the ear's balance detectors. Vestibular rehabilitation exercises may help in this condition. They consist of having you sit on the edge of a table and lie down to one side until the vertigo resolves followed by sitting up and lying down on the other side, again until the vertigo ceases. This is repeated until the vertigo is no longer inducible.

The rest periods can have a maximum of three (3) days, the eight (8) and nine (9) days rest period issued to Ms. Hernaez is highly questionable and no treatment whatsoever was carried out. Moreover, her leave of absence has exceeded the advised rest periods. A special privilege leave was applied subsequent thereto, which was also disapproved.

Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, that is, for the month of September, November and December 2007. She even subsequently incurred nine (9) days [January 2-4, 7-11, 14] unauthorized absences for January, 2008.

On the other hand, her prior unauthorized absences for the month of February [15 days], March [8 days] and June [2 days] 2007, though short of the number of days for the month of June to qualify for habitual absenteeism, can still be sanctioned pursuant to Administrative Circular No. 14-2002 dated March 18, 2002, which under the whereas clause provides:

> *WHEREAS, x x x "**Absenteeism** and Tardiness, even if such do not qualify as 'Habitual' or 'Frequent' under CSC MC No. 04, s. 1991, shall be dealt with severely x x x."* (underscore supplied)

Moreover, in a Memorandum dated **February 22, 2008**, this Office inquired from Dr. Prudencio P. Banzon, Jr., SC Senior Chief Staff Officer of the Medical and Dental Services on whether Ms. Hernaez submitted herself for medical examination in the months of January or February, 2008 and the results thereof if such was the case. Said OAS Memorandum was **received by the Medical and Dental Services on February 26, 2008** and in response, Dr. Banzon sent a Memorandum dated March 5, 2008 stating among others as follows:

> *Clinic records show that on the 22nd of February, 2008, Ms. Hernaez came and sought consult at the SC Clinic. On both occasions, she was attended by Dr. Consuelo Bernal, the clinic physician assigned in the treatment area.*
>
> *On February 22, 2008, Ms. Hernaez was complaining of headache. Her BP was found to be elevated at 150/100, for which stat dose of anti-hypertensive medication was given her. Her BP gradually settled down to 130/90 and after several minutes of rest she left the clinic, apparently feeling better.*
>
> *A week later, on February 28th 2008, Ms. Hernaez again sought consult as (sic) the SC Clinic, this time complaining of "dizziness." Her BP was 140/90. She was again given stat dose of anti-hypertensive medication and advised to rest at the SC Clinic."* (emphasis supplied)

The Memorandum of this **Office received by Ms. Nahren D. Hernaez on January 8, 2008** requiring her to immediately return to work was acted only when she returned to work on January 15, 2008 and without submitting herself for medical examination at the SC Clinic as per directive of the same date (January 8, 2008). This Office assess that Ms. Hernaez belated act of going to the SC Clinic only on **February 22, 2008** was prompted by her having acquired knowledge for some reason or another of a Memorandum by this Office of the same date, that is **February 22, 2008**, was to be released, addressed to the Medical and Dental Services verifying on whether Ms. Hernaez went to the latter office for medical check up. This assessment was by reason of the fact that Ms. Hernaez's work station is in the receiving area of OAS. Clearly, from the Memorandum of Dr. Banzon, Ms. Hernaez's blood pressure (BP) on February 22, 2008 of 150/100 and later subsided (without medical intervention) to 130/90 are within the normal range of BP, considering that she is presently 49 years old where BP could possibly fluctuate and would not approximate the normal range for BP similar to young adults. Her February 28, 2008 BP of 140/90 is likewise not unusual, and no manifestation of an alleged vertigo was reported.

We are apprehensive to recommend dropping Ms. Hernaez from the rolls *considering that she filed sick leave albeit questionable,* and she reported for work from January 15, 2008 to present. Repercussion on dropping her from the rolls would be the effect of

her coming to work and her salary from said period of reporting in addition to her sick leave application though questionable as stated. However, considering her record of absences and the previous memoranda of OAS before the inception of this Administrative Matter, we find her absences in the covered period without authority, constitutive of conduct prejudicial to the best interest of public service and also a case of habitual absenteeism. It caused demoralization among his peers who attends in lieu of her, in her workplace in the receiving area of OAS where visitors and fellow co-workers from other office submit documents to OAS. We cannot discard the possibility that employees stationed in the reception area may not be present to replace her, and absence of an employee stationed in the receiving area where incoming and outgoing documents are received and logged out, affects the very purpose for which the Office of Administrative Services was made to function, that of providing service to the public and the Court.

The penalty for *Conduct prejudicial to the best interest of the service* is similar to the penalty imposed for *habitual absenteeism*, to wit:

> *1st Offense – Suspension (6 mos. 1 day to 1 year)*
> *2nd Offense – Dismissal*

Considering that there are two (2) violations which we find to have been committed by Ms. Hernaez, with the same penalty for the first and second offense, by analogy we recommend the application of Sec. 55 of the Uniform Rules on Administrative Cases in the Civil Service both penalty being equal, the other violation be treated as an aggravating circumstance instead of imposing both penalties at its end. *Sec. 54 par. C thereof, on Manner of Imposition of Penalties provides that the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present*. These are the first administrative offenses for Ms. Hernaez should the Court find merit to this Office's recommendation, albeit she still has another pending administrative matter.

The Court has repeatedly held that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility and the Court can not countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

Section 1, Canon IV of the Code of Conduct for Court Personnel also provides that:

> *Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.*

ALL THE FOREGOING CONSIDERED, it is respectfully recommended that **Ms. Nahren D. Hernaez** be **SUSPENDED** for twelve (12) Months.

Our Ruling

There is no question that Ms. Hernaez committed Habitual Absenteeism and Conduct Prejudicial to the Best Interest of the Service.

Under Civil Service Commission (CSC) Memorandum Circular No. 4, Series of 1991, an officer or employee in the civil service shall be considered habitually absent, if he or she incurs unauthorized absences exceeding the allowable 2.5 monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months.

In the instant case, Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 monthly leave credits for at least three (3) months in a semester particularly, the months of September, November, and December 2007. Records show that for the month of September 2007, out of her ten (10) leave applications, three (3) days were disapproved. Out of her six (6) leave applications for November of the same year, five (5) days were likewise disapproved. For December 2007, she did not report for work and incurred 17.624 days disapproved sick leave applications. She also had nine (9) unauthorized absences for the month of January 2008.

Ms. Hernaez also incurred fifteen (15) unauthorized leaves in February 2007, eight (8) unauthorized leaves in March 2007 and two (2) unauthorized leaves in June 2007. Although her absences within said period fell short of the definition of habitual absenteeism, she still is liable for absenteeism under CSC MC No. 04, Series of 1991.

Relative to the foregoing, this Court takes note of the previous OAS memoranda/letter addressed to Ms. Hernaez, to wit:

a) January 16, 2003 letter requiring her to explain within five (5) days why she should not be dropped from the roll for having been absent from office continuously since December 20, 2002;

b) March 21, 2006 Memorandum citing her act of reporting irregularly to the prejudice of her assigned task;

c) September 7, 2006 Memorandum — enjoining her to report to the office regularly and sternly warning that any further incurrence of absences shall result in the filing of necessary administrative case against her. This memorandum was caused by her unauthorized absences from January to August, 2006.

In *Layao, Jr. v. Manatad*,[2] this Court held that a court employee's absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal. Due to the nature and functions of their office, officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust.[3]

Inherent in this mandate is the observance of prescribed office hours and efficient use of every moment for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[4]

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[2] A.M. No. P-99-1308, May 4, 2000, 331 SCRA 324.

[3] CONSTITUTION (1987), Art. XI, Sec. 1.

[4] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003,* A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508.

Section 52 of the Uniform Rules on Administrative Cases in the Civil Service penalizes habitual absenteeism and conduct prejudicial to the best interest of the service with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Considering that respondent Hernaez is found liable for two or more charges, the penalty corresponding to the most serious charge, to be meted in its maximum period, shall be imposed.[5]

The OAS recommends a penalty of twelve (12) months suspension of respondent. The recommendation is in accord with the Uniform Rules. The Court notes, however, that respondent was recommended to be dropped from the rolls effective April 9, 2008 via a Memorandum dated June 10, 2008, by Deputy Clerk of Court Eden T. Candelaria, OAS. The memorandum was issued in connection with A.M. No. 2008-10(A)-SC entitled "*Re: Absence Without Official Leave of Ms. Nahren D. Hernaez.*"

On July 1, 2008, the Court *En Banc* approved the OAS recommendation dropping respondent from the rolls for AWOL. Since respondent has already been dropped from the rolls, the penalty of suspension is no longer practicable.

In *Reyes, Jr. v. Cristi*,[6] the Court found Ricardo Cristi, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal guilty of habitual absenteeism, meriting a penalty of suspension. However, since he had already resigned, and the penalty of suspension could no longer be imposed, the Court ordered him to pay a fine equivalent to three (3) months salary.

We opt to take an analogous action here. However, records bear out that respondent has been suffering from a variety of illnesses. Under Section 53(a) of the Uniform Rules,[7] the physical

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[5] Uniform Rules on Administrative Cases in the Civil Service, Sec. 55.

[6] A.M. No. P-04-1801, April 2, 2004, 427 SCRA 8.

[7] Section 53. *Extenuating, mitigating, aggravating, or alternative circumstances.* — In the determination of the penalties to be imposed, mitigating,

fitness or unfitness, as in this case, of respondent may be considered a mitigating circumstance in the determination of the penalties to be imposed. Thus, a fine of Five Thousand Pesos (₱5,000.00) is more proper and reasonable.

WHEREFORE, the Court finds Ms. Nahren D. Hernaez *GUILTY* of habitual absenteeism and conduct prejudicial to the best interest of the service. Having been previously dropped from the rolls, she is hereby *FINED* Five Thousand Pesos (₱5,000.00) to be deducted from whatever benefits may be due her.

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, J., on official leave per Special Order No. 510 dated July 15, 2008.

Tinga, J., on official leave per Special Order No. 512 dated July 16, 2008.

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aggravating, and alternative circumstances attendant to the commission of the offense shall be considered. The following circumstances shall be appreciated.

a. Physical fitness

x x x x x x x x x

EN BANC

[A.M. No. P-04-1820. August 6, 2008]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CLARITA QUINTANA-MALANAY, Clerk of Court, MeTC, Pateros, Metro Manila,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM. —** Time and again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.

2. **ID.; ID.; ID.; CLERKS OF COURTS; GROSS VIOLATION OF SC CIRCULAR NO. 50-95 COMMITTED IN CASE AT BAR. —** There is no question as to the guilt of respondent Malanay. The records speak for themselves and it is clearly shown therein that she failed to (1) submit monthly reports of collections, deposits and withdrawals; (2) account for the total amount of ₱646,946.75 representing funds pertaining to the Court; (3) account for missing official receipts; (4) deposit/ remit collections on time; (5) present court orders to support her withdrawals of cash bonds; (6) remit interest earned from the Fiduciary Fund deposits to the account of the Judiciary Development Fund (JDF); and (7) explain the forged signatures of Judge Pahimna. As reported by the audit team, the withdrawals of cash bonds were not signed by the presiding judge. Neither was there any order from the court allowing such withdrawals. These were gross violations of Circular No. 50-95. Moreover, respondent Malanay, as the Clerk of Court, had the duty to remit the collections within the prescribed period. Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute neglect of duty for which she should be administratively liable. More so, since she failed to give a satisfactory explanation for said shortages.

3. **ID.; ID.; ID.; ID.; CLERKS OF COURT AS CUSTODIANS OF COURT'S FUNDS; ELUCIDATED. —** Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized depository banks. The Court has issued several circulars regarding court funds. Collectibles accruing to the JDF should be deposited daily with the Land Bank of the Philippines. If depositing daily is not possible, deposits for the fund shall be every second and third Fridays and at the end of every month; provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days above indicated. These circulars are mandatory in nature as they are designed to promote full accountability for government funds, and no protestation of good faith can override such mandatory nature. Failure to observe these circulars resulting in loss, shortage, destruction or impairment of court funds and properties makes respondent Malanay administratively liable.

4. **ID.; ID.; ID.; ID.; ID.; VIOLATION OF TRUST REPOSED IN CASE AT BAR; ACTS OF GROSS DISHONESTY, GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY, COMMITTED. —** By failing to properly remit the cash collections constituting public funds and by withdrawing cash bonds without an order from the court, respondent Malanay violated the trust reposed in her as disbursement officer of the judiciary. Her failure to explain the fund shortage and unauthorized withdrawals, and to restitute the shortage and fully comply with the Court's directives leave us with no choice but to hold her liable for gross dishonesty and grave misconduct in office, and to order her dismissal from office. The Court condemns any conduct, act or omission which violates the norm of public accountability or diminishes the faith of the people in the judiciary. A failure to turn over on time cash deposited with accountable public officers constitutes gross neglect of duty and gross dishonesty, if not malversation. Gross neglect

of duty and gross dishonesty are grave offenses punishable by dismissal under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. The fact that some of respondent Malanay's accountabilities were later on deposited do not divest her of administrative liability since the unreasonable delay in the remittance of fiduciary funds constitutes serious misconduct. This Court has in fact accorded leniency to respondent Malanay. For over four years now, she failed to fully comply with several Court directives to submit all financial documents as well as case records regarding the court's funds in order to determine her exact accountability and to restitute the unremitted funds. Neither did she offer any satisfactory explanation justifying her non-compliance. Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing fund or property to personal use. As to the forged signatures of Judge Pahimna, respondent Malanay's explanation fails to convince this Court. Even assuming that she was able to settle the anomaly after conferring with Judge Pahimna, she failed to recognize that her obligation is not to Judge Pahimna, but rather to the Court, the parties concerned and the public. Neither can she excuse herself from liability on the pretext of lapse of judgment. The moment she accepted her appointment as Clerk of Court, it is presumed that she likewise accepted the corresponding duties and responsibilities attached to it.

5. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; PROPER PENALTY. —** This Court has not hesitated to impose the ultimate penalty on those who have gravely fallen short of their accountabilities. No less than the Constitution enshrines the principle that a public office is a public trust. The supreme law of the land commands all public officers and employees to be at all times accountable to the people; and to serve them with utmost dedication, honesty and loyalty. Worth stressing, dishonesty is a malevolent conduct that has no place in the judiciary. x x x Respondent *CLARITA QUINTANA-MALANAY*, Clerk of Court, MeTC, Pateros, Manila, is hereby found *GUILTY* of gross neglect of duty, dishonesty and grave misconduct. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits and with prejudice to re-employment in the government, including government-owned or controlled corporations.

DECISION

PER CURIAM:

This administrative matter stemmed from the financial audit of the Metropolitan Trial Court of Pateros, Metro Manila (MeTC-Pateros), conducted by the Court Management Office (CMO) under the Office of the Court Administrator (OCA). The audit covered the periods October 2003 to January 29, 2004 and concerned the accountability of respondent Clerk of Court Clarita Quintana-Malanay.

The audit team reported that the preliminary cash count revealed an initial cash shortage of ₱9,438.00,[1] as the team was able to count only ₱8,652.00[2] of the ₱18,090.00[3] total undeposited collections for the periods October 2003 to January 29, 2004. When the audit team attempted to conduct a more detailed and comprehensive financial audit on all the books of accounts of the court, it noted that respondent Malanay was apprehensive in providing them the pertinent documents needed to make a thorough audit. The audit team requested respondent Malanay to produce all the case folders of these cases in which the cash bonds were reported to have been withdrawn already, but of the 229 case folders the audit team requested, only two (2) folders were given. Respondent Malanay also failed to present the passbook and submit the list of unwithdrawn cash bonds. She requested a one-day extension to update the court records but it took her seven days to produce the requested documents. In view of respondent Malanay's uncooperativeness, Judge Marilou Runes-Tamang relieved her as Officer-in-Charge and designated Roselyn L. Villano as replacement.[4]

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[1] Re: Report on the Financial Audit Conducted at the MeTC, Pateros, M.M. dated May 11, 2004, p. 1.

[2] *Id*.

[3] *Id*.

[4] *Id*. at 3; Memorandum Order No. 003-04 dated February 2, 2004.

The audit team likewise reported the following:

1. The Fiduciary Trust Fund Savings Account which was opened for MeTC-Pateros was under the personal name of respondent Malanay with her as the sole signatory.[5]

2. A confirmation with the depository bank, Land Bank of the Philippines-Pasig Branch, disclosed that the cash-in-bank balance as of January 29, 2004, for said account was only ₱20,066.05, inclusive of ₱10,066.05 interest earned from the date it was opened.[6]

3. In five cases, respondent Malanay forged the signature of then Presiding Judge Lorifel Lacap-Pahimna in court orders attached to the case folders.[7]

4. In Criminal Cases Nos. 5172-96, 5264-97 and 5327-97 which were supposedly archived with their respective cash bonds ordered confiscated by Judge Pahimna, respondent Malanay attached and certified duplicate copies of court orders dismissing the said cases and released the posted cash bonds without Judge Pahimna's signature.[8] No original court orders dismissing these cases were found on file.

5. In 19 cases, the respective cash bonds totaling to ₱55,500.00 were withdrawn without court orders specifically signed by the presiding judge. Instead, a copy of an order stamped "original signed" was attached. However, no original court orders were found in the case folders. Likewise, said court orders lacked the initials of the staff who typed the same, contrary to the usual practice of typing the staff's initials in the court order.[9]

6. In 35 cases where their cash bonds totaling ₱108,100.00 were ordered confiscated, no deposits were found in the

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[5] Report on the Financial Audit Conducted at the Metropolitan Trial Court, Pateros, M.M. dated May 11, 2004, p. 2.

[6] *Id*. at 3.

[7] *Id*. at 4.

[8] *Id*. at 5.

[9] *Id*. at 6, par. (a).

accruing account of the government and yet the same were reported as withdrawn.[10]

7. In 5 cases, cash bonds were withdrawn without direct court orders to release the same. Furthermore, there were no acknowledgment receipts to prove that said cash bonds were received by the bondsmen or their authorized representative. Likewise, no motions were filed by the accused to withdraw the cash bond posted.[11]

8. The collections pertaining to the Fiduciary Trust Fund amounting to ₱1,044,421.75 were not reported to the Accounting Division, Office of the Court Administrator and were not reflected in the Clerk of Court Cash Book for Fiduciary Trust Fund.[12]

9. Thirty-six case folders[13] were not submitted to the audit team upon respondent Malanay's claim that the records can no longer be found in the court's custody.[14]

10. The cash bond in Criminal Case No. 5710 with Official Receipt (O.R.) No. 8033806 dated June 18, 1999 amounting to ₱3,000.00 was withdrawn without a court order and acknowledgment receipt to support its withdrawal.[15]

11. In Criminal Case No. 5696, a cash bond amounting to ₱1,000.00 was ordered by Judge Pahimna to be withdrawn and to be remitted to the Judiciary Development Fund as payment of court fine imposed on the accused. No remittance was made but the amount was reported as withdrawn.[16]

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[10] *Id*. at 7, par. (b).

[11] *Id*. at 8, par. (d).

[12] *Id*., par. (e).

[13] Amounting to ₱185,821.75.

[14] Report on the Financial Audit Conducted at the Metropolitan Trial Court, Pateros, M.M. dated May 11, 2004, p. 8, par. (f).

[15] *Id*. at 8, par. (c).

[16] *Id*. at 9, par. (g).

12. In Criminal Case No. 4850-94, there were no acknowledgment receipts found in the records to prove that the cash bonds amounting to ₱6,000.00 were received by the bondsman.[17]

13. The collections pertaining to the JDF, for the periods 1985 to 2004, revealed a shortage of ₱5,095.00. However, the team failed to verify the transactions reported from 1985 to 1993 due to missing triplicate copies of official receipts.[18]

    There were also instances where the amounts reflected in the official receipts were greater than the amounts actually reported/recorded. Some official receipts were issued not according to its sequence. Furthermore, the collections were deposited on a monthly basis.[19]

14. As to the collections pertaining to the General Fund for the periods 1995 to 2003, the collections revealed a shortage of ₱50,137.00.[20]

15. Respondent Malanay did not report in the cash book the transactions involving O.R. No. 15395438 pertaining to Criminal Case No. 5251-97 amounting to ₱50,000.00 as fine imposed by Judge Tamang on the accused.[21]

16. The team also noted respondent Malanay's late submission of monthly reports, late remittances of collections, incorrect cash book footings of collections resulting to under remittances, and missing booklet of official receipts with series 5058101 to 5058150.[22]

17. As per collections pertaining to the Victims Compensation Fund, the audit revealed a shortage of ₱150.00. Moreover, most of the collections were remitted beyond the required schedule.[23]

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[17] *Id*. at 9, par. (h).

[18] *Id*. at 10, par. II.

[19] *Id*.

[20] *Id*. at 10, par. III.

[21] *Id*. at 11.

[22] *Id*.

[23] *Id*., par. V.

18. As to the Legal Research Fund, the audit team found a shortage of ₱235.00. The official receipts supporting the collections from July 31, 2002 to December 31, 2003 were unavailable. Likewise, collections amounting to ₱270.00 were not reflected in the cash book and were not remitted to UP Law Center.[24]

19. Fees amounting to ₱2,100.00 for seven marriage solemnizations were unsupported by official receipts.[25]

20. From 2001 to 2003, filing fees in eight *estafa* cases were not collected.[26]

In sum, the accountabilities/cash shortages of respondent Malanay found by the audit team were as follows:

PARTICULARS	**AMOUNT**
I. Fiduciary Trust Fund	₱ 640,751.75
II. Judiciary Development Fund	₱ 5,095.00
III. General Fund	₱ 50, 137.00
IV. Special Allowance of Justices & Judges	0.00
V. Victims Compensation Fund	₱ 150.00
VI. Legal Research Fund	₱ 295.00[27]
VII. Others (Marriage Solemnization)	₱ 2,100.00
TOTAL	**₱ 698,528.75**[28]

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[24] *Id*., par. VI.

[25] *Id*. at 12, par. VI.

[26] *Id*. at 12.

[27] *Id*. at 11, par. VI (Initially reported as ₱235.00.)

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

The audit team failed to compute the actual interest which should have accrued to the Court since the audit was substantially affected by numerous missing documents.

On the basis of the foregoing findings and the documents at hand, the OCA recommended on May 20, 2004[29] that the audit report be treated as an administrative complaint against respondent Malanay.

On June 8, 2004, acting on the report and recommendation of the OCA, the Court resolved to

(a) **DOCKET** the subject report as A.M. No. P-04-1820 *(Office of the Court Administrator vs. Clerk of Court Clarita Quintana-Malanay);*

(b) **DIRECT** Clerk of Court Clarita Quintana-Malanay to

(1) **DEPOSIT** to the Fiduciary Fund the total amount of ₱345,930.00, representing cash in bank shortages, falsified withdrawals, and confiscated cash bonds which were not remitted to the JDF, and **SUBMIT** to the Fiscal Monitoring Division, OCA, the validated deposit slips, both within thirty (30) days from notice hereof;

(2) **WITHDRAW** from the Fiduciary Fund the amounts of ₱10,066.05 and ₱108,000.00, representing interest earned and confiscated cash bond, respectively; **DEPOSIT** the same to the JDF account; and **SUBMIT** to the Fiscal Monitoring Division, OCA, the validated deposit slips, all within thirty (30) days from notice hereof;

(3) **SUBMIT**, within ten (10) days from notice hereof, the original Court Orders in the following cases where bonds were refunded with unsigned court orders;

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[29] Memorandum for Hon. Hilario G. Davide, Re: Report on the Financial Audit Conducted at the Metropolitan Trial Court, Pateros, Metro Manila, pp. 1-4.

CASE NUMBER	LITIGANTS	BOND POSTED
5336 to 5338; 5342	Gilson Roque	₱ 4,000.00
5469	Salvador Arento, *et al*.	5,000.00
5469	Leandro Santiago	5,000.00
5650 to 5651	Benjamin Reymundo	1,500.00
5874-00	Dominador S. Yumal	4,000.00
5820-99	Vicente Sumapit, Jr.	6,000.00
6152	Arnold Paros	2,000.00
6173	Daniel Torres	2,000.00
6303	Ernesto Roces	3,000.00
6333-03	Jorge Copia	5,000.00
6334-03	Jayson Manzano	5,000.00
6334-03	Jorge Copia	5,000.00
6325-03	Elias Millis	2,000.00
6350	Danilo Sandoval	3,000.00
6351	George Villanueva	3,000.00
TOTAL		₱ 55,500.00

(4) **SUBMIT** to the Court, within (10) days from notice hereof, the Court Order authorizing the refund of the cash bond posted in Criminal Case No. 5710;

(5) **DEPOSIT** the amounts of ₱55,095.00, ₱137.00, ₱150.00 and ₱295.00, representing the balance of her accountability in the Judiciary Development Fund, General Fund, Victims Compensation Fund and Legal Research Fund, respectively, and **SUBMIT** to the Fiscal Monitoring Division, OCA, the validated deposit slips, both within ten (10) days from notice hereof;

(6) **REMIT**, within ten (10) days from notice hereof, the amount of ₱2,100.00 representing solemnization fees which were not receipted;

(7) **ACCOUNT**, within ten (10) days from notice hereof, for the missing Official Receipts which pertains to the Judiciary Development Fund covering the period of 1985 to 1993, and part of the series issued for the General Fund covering the period of 1 February 1997 to 31 August 1997; and

(8) **PRODUCE**, within ten (10) days from notice hereof, the case folders of the following thirty six (36) criminal cases:

DATE	O.R.NUMBER	CASENUMBER	AMOUNT
3/__/96	4127030	4985 to 4993	9,000.00
3/30/95	4127031	5019 to 5022	8,000.00
9/24/96	5058154	96-126 to 96-128	6,000.00
2/11/97	5058192	529 to 5249	28,000.00
4/18/97	5058303	257-97	2,000.00
7/9/97	5058309	5321	30,000.00
9/4/97	5058319	5353	2,000.00
3/27/98	5058344	1002-96	1,812.50
3/27/98	5058345	1003-96	2,718.75
3/27/98	5058346	1004-96	2,718.50
3/27/98	5058347	1005-96	2,900.00
3/27/98	5058348	1006-96	2,185.00
3/27/98	5058349	1007-96	2,625.00
3/27/98	5058350	1005-96	1,087.00
6/6/98	8033207	38-042195-96	8,000.00
6/10/98	8033209	5522	10,000.00
6/11/98	8033210	94818	2,000.00
9/11/98	8033221	5406 to5407	2,000.00
1/2/99	8033229	5647	5,000.00
1/12/99	8033232	5648	5,000.00
3/15/99	8033245	5682	10,000.00

7/9/99	8033808	5764	3,000.00
8/10/99	8033813	5764	3,000.00
10/4/99	8033828	10406	1,125.00
10/5/99	8033829	1073	1,300.00
11/26/99	8033834	5838	3,000.00
11/26/99	8033835	5838	3,000.00
11/26/99	8033836	5838	3,000.00
4/27/00	11498652	1151-99	3,250.00
4/27/00	11498653	1152-99	2,600.00
4/27/00	11498654	1153-99	1,950.00
4/27/00	11498655	1154-99	4,550.00
7/24/00	11498669	5916	2,000.00
8/2/00	11498671	5918	4,000.00
8/2/00	11498672	5918	4,000.00
4/30/02	11498776	5149	3,000.00
TOTAL			**185,821.75**

(c) **DIRECT** Presiding Judge Marilou Runes-Tamang to (1) **OPEN** a new and interest-bearing savings account in the Land Bank of the Philippines under the name of MeTC Pateros, with her and designated OIC, Roselyn L. Villano, as authorized signatories; (2) **REQUIRE** the concerned parties to file a separate motion to withdraw cash bond posted by the accused if the same was not provided in the order; and (3) **INVESTIGATE** the circumstances regarding the eight (8) cases where the decisions were falsified, and **SUBMIT** her report and recommendation thereon within thirty (30) days from notice hereof, to wit: Cases Nos. 4996-5001, 5132, 5133, 5134, 5137, 5172, 5264 and 5327;

(d) **DIRECT** the Legal Office, OCA, to **FILE** the appropriate criminal charges against Clerk of Court Clarita Quintana-Malanay;

(e) **PLACE** Clerk of Court Quintana-Malanay under **SUSPENSION** pending resolution of this administrative matter; and

(f) **ISSUE** a hold departure order against Clerk of Court Clarita Quintana-Malanay to prevent her from leaving the country.

For her part, respondent Malanay submitted several comments and motions for extension. She explained that since she was relieved as accountable officer of the court, it was impossible for her to make the necessary withdrawals in order to restitute the shortages.[30] She claimed having exerted effort to comply with the Court's directives but due to her suspension, she was not able to comply fully because she could not even secure a loan from private persons as she had no income to pay them.[31] She claimed that her suspension was very harsh considering that it was her first offense after rendering 37 years of satisfactory service to the Court.[32] Respondent Malanay also insisted that her suspension should be lifted and her salaries be released or she should be allowed to apply for early retirement. If allowed to retire, the cash shortages would be deducted from her retirement benefits.[33]

In a Resolution dated June 14, 2005, the Court resolved to defer the filing of a criminal action against respondent Malanay until the administrative case against her had been finally resolved.

On September 18, 2007, the Court reiterated its earlier directive to respondent Malanay in the Resolution dated June 8, 2004.

On November 26, 2007, respondent Malanay attempted to comply/explain in the following manner:

As to Directive No. 1 — Respondent Malanay begged for the Court's leniency since she is a first time offender and has not been charged for dishonesty during her almost 37 years of service in the Judiciary. She pleaded that she be allowed to settle the alleged

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[30] Partial Compliance/Answer and/or Comments with Omnibus Motion dated October 29, 2004.

[31] Respondent's *Ex-Parte* Motion for Reconsideration dated February 3, 2005.

[32] Respondent's Motion for Reconsideration dated August 2, 2007.

[33] *Id*.; Supplemental Partial Compliance with Motion/Prayers dated April 11, 2007.

shortages through her leave credits with a cash equivalent of ₱799,400.00,[34] which is sufficient to cover the shortages.

As to Directive No. 2 — Respondent Malanay explained that she was advised that she could only deposit but not withdraw amounts from the Fiduciary Funds. She prayed that the present cash clerk of MeTC- Pateros, be directed to withdraw ₱10,066.65 representing interest earned and ₱108,000.00 representing the alleged confiscated bond from the Fiduciary Fund and deposit the same to the JDF Account, as required by the Court.

As to Directive No. 3 — Respondent Malanay coordinated with the OIC for the retrieval of the alleged original unsigned orders in Criminal Cases Nos. 5335-38-45 (Gilson Roque), 5469 (Salvador Arento), 5469 (Leonardo Santiago), 5650-51 (Benjamin Raymundo), 5874 (Dominador Yumul), 6173 (Daniel Torres), 6303 (Ernesto Roces), 633-6334-03 (Jorge Copia and Nayson Manzano), 6350 (Danilo Sandoval) and 6351 (George Villanueva). However, despite diligent efforts, only those pertaining to 5874 and 633-6334-03 were located.

As to Directive No. 4 — Respondent Malanay explained that the accused in Criminal Case No. 5710 pleaded guilty and was sentenced to pay a fine of ₱1,000.00 to be deducted from the cash bond he posted; thereafter, the bond was released to the said accused. Respondent Malanay claimed that it was an honest mistake that she did not notice that the court order failed to allow the release of the bond since it was the usual practice that after the accused pleaded guilty, the fine will be deducted from the bond and thereafter released to the accused.

As to Directive No. 5 — Respondent Malanay suggested that the alleged shortages in the cashbook of JDF amounting to ₱55,095.00 be settled from her leave credits.

As to Directive No. 6 — Respondent Malanay alleged that the missing used OR's could no longer be retrieved despite diligent efforts. Respondent Malanay reiterated that she started as accountable officer for the JDF Fund only in 1987 and for the General Fund in 1995. She further explained that the COA conducted an audit sometime in 2000 to 2002 on the cashbooks of the JDF Fund and General Fund but no adverse findings were reported.

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[34] Certification from the Finance Division, Financial Management Office, OCA, Supreme Court.

As to Directive No. 7 — As to the alleged falsified orders, Respondent Malanay claimed that she already made a personal dialogue with then Presiding Judge Pahimna. She claimed that Judge Pahimna noted her explanation with compassion since she was suffering from hypertension, migraine with vertigo and was even confined at the Makati Medical Center during those times. She pleaded that those instances were her unguarded moments for which she committed some lapses and human mistakes. She added that since the cash bonds were already released to the corresponding accused, the same should be deducted from her accountabilities.

On January 22, 2008, the Court referred respondent Malanay's compliance to the OCA for evaluation, report and recommendation.

On February 26, 2008, the OCA recommended the dismissal of respondent Malanay from service. The OCA also came up with the following final cash accountabilities of respondent Malanay after considering the pertinent documents and case records she submitted:

PARTICULARS	**PREVIOUS ACCOUNTABILITIES & BEFORE COMPLIANCE**	**FINAL ACCOUNTABILITIES**
I. Fiduciary Trust Fund	₱ 640, 751.75	₱ 591,851.75
II. Judiciary Development Fund	5, 095.00	5,095.00
III. General Fund	50, 137.00	50,000.00
IV. Special Allowance for Justices & Judges	0.00	0.00
V. Victims Compensation Fund	150.00	0.00
VI. Legal Research Fund	295.00[35]	0.00
VII. OTHERS (Marriage Solemnization)	2,100.00	0.00
TOTAL	**₱ 698,528.75**	**₱ 646,946.75**

[35] *Supra* note 27.

On March 18, 2008, the Court resolved to

(a) **DIRECT** the incumbent Clerk of Court or Officer-in-Charge to **DEPOSIT** the checks representing restitution of the shortages incurred in the following funds: Fiduciary Fund, General Fund and Judiciary Development Fund, within twenty-four (24) hours after receipt thereof of checks [for the money value of respondent Malanay's leave credits] from the Checks Disbursement Division, FMO-OCA, and **SUBMIT** to the Fiscal Monitoring Division, Court Management Office (CMO), within two (2) days copy(ies) of machine validated deposit slips as proof of compliance thereof;

(b) **DIRECT** respondent Clarita Quintana-Malanay, within ten (10) days from notice without extension, to **ACCOUNT** and **SUBMIT** to the Fiscal Monitoring Division, CMO, OCA, the following missing Official Receipts:

OFFICIAL RECEIPTS NOs.:	**NUMBER OF BOOKLETS**
2558501-2559000	10
2299001-2299500	10
5058101-5058150	1
15395851-15395900	1
15396151-15396200	1
TOTAL	23

(c) **DIRECT** Hon. Lorifel Lacap Pahimna, RTC, Branch 69, Pasig City, Metro Manila, to **COMMENT** within ten (10) days from receipt hereof, on the five (5) incidents of forgery during her term as Presiding Judge of Metropolitan Trial Court of Pateros, Metro Manila, where her signatures on top of her name appeared on Court Orders in the following criminal cases, dismissing the cases and authorized the release of cash bond to its respective bondsmen, to wit:

Criminal Case No.:

5132
5133
5134
5137
4996-5001

(d) **DIRECT ANEW** Presiding Judge Marilou Runes-Tamang to

(i) CONDUCT an investigation concerning the following criminal cases, where decisions dismissing the case were falsified and signatures of the deciding judge were forged; and submit the report and recommendation within thirty (30) days from receipt hereof:

Criminal Case No.:

5132
5133
5134
5137
4996-5001
5172
5264
5327

(ii) **EXPLAIN** why she issued a new order dated August 17, 2004 authorizing the release of cash bond posted by Elias Milis, accused in Criminal Case No. 6325-03, when in fact there was a previous order on May 5, 2003. Although the earlier order was just stamped "ORIGINAL SIGNED," the same cash bond was withdrawn on May 5, 2003 and August 23, 2004 as evidenced by Annexes B, B-1, C and C-1 resulting to double withdrawal.

(e) **DIRECT** the Legal Office to file the appropriate criminal charges against Mrs. Clarita Quintana-Malanay.[36]

In her Compliance,[37] Judge Tamang averred that she was not yet the presiding judge of MeTC-Pateros when the subject cases, except Criminal Case No. 6325-03, were decided.

After an evaluation of the court records, except for Criminal Case Nos. 5172, 5264 and 5327 which are still missing, Judge Tamang concluded that the questioned decisions/resolutions in

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[36] Resolution, dated March 18, 2008, pp. 1-2.

[37] Report, Recommendation, and Explanation, dated June 2, 2008.

the subject criminal cases were indeed falsified and the signatures of Judge Pahimna therein were forged. She also discovered that except for Criminal Case Nos. 4996-96 to 5001-96, all the subject criminal cases were not listed as decided cases contrary to what appeared in the questioned orders but were merely archived or sent to the files due to the non-arrest of the accused. Judge Tamang also observed that in all the four subject cases, on the dates on which the accused were supposed to have been arraigned as alluded to in the questioned orders, no minutes of the proceedings were attached to each case record. Judge Tamang also noted that the questioned orders of arraignment with the supposed directive to release cash bonds and the money evidence, did not contain any proof at all that copies of the said questioned orders were served on the parties either personally or by mail. Thus, Judge Tamang believed that the orders archiving the case genuinely issued by the court were deliberately detached from the record and new ones that were falsified were attached thereto to justify the release of the cash bonds and the money evidence.

Judge Tamang did not directly point to respondent Malanay as the perpetrator of the forged signatures. However, she stressed that in respondent Malanay's Comment dated May 8, 2008, she admitted her responsibility for the anomalous releases of evidence and cash bonds and attributed her mistakes to mere lapses of judgment. She also pointed out that as the sole accountable officer in the court, respondent Malanay kept the cash bonds posted by the accused and released the same upon termination of the case.

As to the two orders issued in Criminal Case No. 6325-03 resulting in double withdrawal of the accused's cash bond, Judge Tamang disputed that she issued two separate orders authorizing the withdrawal of the cash bond. As evidenced by the case records, it was only on August 17, 2004 that she ordered upon motion of the defense, the release of the cash bond under O.R. No. 11498832 dated April 15, 2003 in the sum of ₱2,000.00 in favor of the accused. Judge Tamang denies any knowledge of the questioned May 5, 2003 Order that allegedly ordered the

release of the cash bond. She averred that it was highly improbable that she would authorize the withdrawal of the cash bond because the case was even scheduled for pre-trial. Judge Tamang claimed that the unauthorized withdrawal of the cash bond in Criminal Case No. 6325-03 was just one of the unexplained withdrawals charged against respondent Malanay by the audit team.

Upon a thorough review of the records of this case, the Court agrees with the findings and recommendations of the OCA that respondent Malanay be dismissed from the service.

Time and time again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[38]

There is no question as to the guilt of respondent Malanay. The records speak for themselves and it is clearly shown therein that she failed to (1) submit monthly reports of collections, deposits and withdrawals; (2) account for the total amount of ₱646,946.75 representing funds pertaining to the Court; (3) account for missing official receipts; (4) deposit/remit collections on time; (5) present court orders to support her withdrawals of cash bonds; (6) remit interest earned from the Fiduciary Fund deposits to the account of the Judiciary Development Fund (JDF); and (7) explain the forged signatures of Judge Pahimna.

As reported by the audit team, the withdrawals of cash bonds were not signed by the presiding judge. Neither was there any order from the court allowing such withdrawals. These were

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[38] *Marasigan v. Buena,* 348 Phil. 1, 10 (1998); *In Re: Delayed Remittance of Collections of Odtuha*, 445 Phil. 220, 224 (2003); *Office of the Court Administrator v. Atty. Galo*, 373 Phil. 483, 490 (1999); *Cosca v. Palaypayon, Jr.,* A.M. No. MTJ-92-721, September 30, 1994, 237 SCRA 249, 269.

gross violations of Circular No. 50-95.[39] Moreover, respondent Malanay, as the Clerk of Court, had the duty to remit the collections within the prescribed period.[40] Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute neglect of duty for which she should be administratively liable. More so, since she failed to give a satisfactory explanation for said shortages.

Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer,

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[39] SUBJECT: COURT FIDUCIARY FUNDS

The following guidelines and procedures for purposes of uniformity in the manner of collections and deposits are hereby established:

A. *Guidelines in Making Deposits:*

x x x x x x x x x

(2) Deposits shall be made in the name of the Court, with its Clerk of Court and the Executive Judge as authorized signatories.

x x x x x x x x x

B. *Guidelines in Making Withdrawals*:

(1) Withdrawal slips shall be signed by the Executive/Presiding Judge and countersigned by the Clerk of Court.

(2) No withdrawals, except as specifically provided in the immediately preceding paragraph, shall be allowed unless there is a lawful order from the Court that has jurisdiction over the subject matter involved.

Took effect on November 1, 1995.

[40] Administrative Circular No. 5-93.

SUBJECT: *LAND BANK OF THE PHILIPPINES, LIKEWISE THE AUTHORIZED GOVERNMENT DEPOSITORY BANK FOR THE JUDICIARY DEVELOPMENT FUND (JDF)*

x x x x x x x x x

3. *Duty of the Clerks of Court, Officers-in-Charge or accountable officers*. — The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections for said Fund.

x x x x x x x x x

April 30, 1993.

accountant, guard and physical plant manager thereof.[41] They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds.

Clerks of court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized depository banks. The Court has issued several circulars regarding court funds. Collectibles accruing to the JDF should be deposited daily with the Land Bank of the Philippines.[42] If depositing daily is not possible, deposits for the fund shall be every second and third Fridays and at the end of every month; provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days above indicated. These circulars are mandatory in nature as they are designed to promote full accountability for government funds, and no protestation of good faith can override such mandatory nature. Failure to observe these circulars resulting in loss, shortage, destruction or impairment of court funds and properties makes respondent Malanay administratively liable.

By failing to properly remit the cash collections constituting public funds and by withdrawing cash bonds without an order

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[41] *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan, A.M. No. P-02-1641*, January 20, 2004, 420 SCRA 150, 157-158.

[42] Administrative Circular No. 5-93.

SUBJECT: *LAND BANK OF THE PHILIPPINES LIKEWISE THE AUTHORIZED GOVERNMENT DEPOSITORY BANK FOR THE JUDICIARY DEVELOPMENT FUND (JDF)*

x x x x x x x x x

c. *In the RTC, SDC, MetTC, MTCC, MTC, MCTC and SCC.* — The daily collections for the Fund in these courts shall be deposited every day with the local or nearest *LBP* branch "For the account of the Judiciary Development Fund, Supreme Court, Manila — SAVINGS ACCOUNT NO. *159-01163-1*; or if depositing daily is not possible, deposits for the Fund shall be every second and third Fridays and at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days before indicated.

x x x x x x x x x

Issued on April 30, 1993.

from the court, respondent Malanay violated the trust reposed in her as disbursement officer of the judiciary. Her failure to explain the fund shortage and unauthorized withdrawals, and to restitute the shortage and fully comply with the Court's directives leave us with no choice but to hold her liable for gross dishonesty and grave misconduct in office, and to order her dismissal from office. The Court condemns any conduct, act or omission which violates the norm of public accountability or diminishes the faith of the people in the judiciary.[43]

A failure to turn over on time cash deposited with accountable public officers constitutes gross neglect of duty and gross dishonesty, if not malversation. Gross neglect of duty and gross dishonesty are grave offenses punishable by dismissal under Section 52,[44] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.[45]

The fact that some of respondent Malanay's accountabilities were later on deposited do not divest her of administrative liability since the unreasonable delay in the remittance of fiduciary funds constitutes serious misconduct.[46]

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[43] *Re: Complaint Against Atty. Wilfredo B. Claveria for Misappropriation of Judiciary Funds*, Adm. Matter Nos. P-02-1626 and P-03-1759, July 7, 2004, 433 SCRA 495, 501.

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

A. The following are ***grave offenses*** with their corresponding penalties:

1. Dishonesty

1st offense- Dismissal

2. Gross Neglect of Duty

1st offense- Dismissal

x x x x x x x x x

August 31, 1999.

[45] *Re: Report on the Financial Audit Conducted in the Municipal Trial Court (MTC), Sta. Cruz, Davao del Sur*, A.M. No. 05-2-41-MTC, September 30, 2005, 471 SCRA 143, 150.

[46] See *Lirios v. Oliveros*, Adm. Matter No. P-96-1178, February 6, 1996, 253 SCRA 258, 263.

This Court has in fact accorded leniency to respondent Malanay. For over four years now, she failed to fully comply with several Court directives to submit all financial documents as well as case records regarding the court's funds in order to determine her exact accountability and to restitute the unremitted funds. Neither did she offer any satisfactory explanation justifying her non-compliance. Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing fund or property to personal use.[47]

As to the forged signatures of Judge Pahimna, respondent Malanay's explanation fails to convince this Court. Even assuming that she was able to settle the anomaly after conferring with Judge Pahimna, she failed to recognize that her obligation is not to Judge Pahimna, but rather to the Court, the parties concerned and the public. Neither can she excuse herself from liability on the pretext of lapse of judgment. The moment she accepted her appointment as Clerk of Court, it is presumed that she likewise accepted the corresponding duties and responsibilities attached to it.

This Court has not hesitated to impose the ultimate penalty on those who have gravely fallen short of their accountabilities. No less than the Constitution enshrines the principle that a public office is a public trust. The supreme law of the land commands all public officers and employees to be at all times accountable to the people; and to serve them with utmost dedication, honesty and loyalty.[48]

Worth stressing, dishonesty is a malevolent conduct that has no place in the judiciary.[49] Pertinent here is the following admonition:

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[47] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380-381 (2002).

[48] *Id.* at 381.

[49] *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, July 22, 2005, 464 SCRA 1, 15.

x x x [this Court] tries to devise the appropriate action to strengthen the moral fiber and strength of character of the employees and officers that constitute the judiciary, this [C]ourt shall never be less strict in applying only the highest standards of propriety, decorum, integrity, uprightness and honesty from the highest judicial officer of the land to the humblest court employee, for the ultimate power of this court lies in its incorruptibility.[50]

WHEREFORE, respondent *CLARITA QUINTANA-MALANAY*, Clerk of Court, MeTC, Pateros, Manila, is hereby found *GUILTY* of gross neglect of duty, dishonesty and grave misconduct. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits and with prejudice to re-employment in the government, including government-owned or controlled corporations. The Employees Leave Division, Office of Administrative Services, OCA, is *DIRECTED* to compute the balance of respondent Malanay's earned leave credits and forward the same to the Finance Division, Fiscal Management Office, OCA, which shall compute its monetary value. The amount, as well as other benefits she may be entitled to, shall be applied as restitution of the shortage.

The Court further *REMINDS* Judge Marilou Runes-Tamang and Judge Lorifel Lacap-Pahimna to exercise effective supervision over the personnel of their respective courts, especially those charged with collection of the Fiduciary Fund and other trust funds (Judiciary Development Fund and Trust Fund).

The OCA is also *ORDERED* to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of the criminal culpability of respondent Malanay.

SO ORDERED.

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

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

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

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[50] *Sy v. Mongcupa*, 335 Phil. 182, 187 (1997).

EN BANC

[A.M. No. RTJ-08-2133. August 6, 2008]
(Formerly A.M. OCA IPI No. 05-2165-RTJ)

DATU OMAR S. SINSUAT and MARIANO H. PAPS, *complainants, vs.* **JUDGE VICENTE A. HIDALGO, Regional Trial Court, Branch 37, Manila,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; HOW CHARGES ARE INSTITUTED. —** Section 1 of Rule 140 of the Rules of Court provides: SECTION 1. *How instituted.* — Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the *Sandiganbayan* may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct. Under the above-quoted Rule, there are three ways by which administrative proceedings against judges may be instituted: (1) *motu proprio* by the Supreme Court; (2) upon *verified complaint* with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an *anonymous complaint* supported by public records of indubitable integrity.

2. **ID.; ID.; ID.; ID.; ANONYMOUS COMPLAINT SUPPORTED BY RELIABLE RECORDS; CASE AT BAR. —** While the copy of the Motion which complainants furnished the OCA was unverified as were their subsequent letters, the OCA correctly treated them as anonymous complaint. The Court has, on several occasions, been entertaining complaints of this nature especially where respondents admitted the material allegations of the complainants as in respondent's case. Anonymous complaints, as a rule, are received with caution.

They should not be dismissed outright, however, where their averments may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence. Here, the motion and letters sufficiently averred the specific acts upon which respondent's alleged administrative liability was anchored. And the averments are verifiable from the records of the trial court and the CA's Decision.

3. **ID.; ID.; ID.; GROSS MISCONDUCT; FAILURE TO OBSERVE RULES IMPOSED TO COURTS UNDER PD 1818 AND RA 8975 RE GOVERNMENT INFRASTRUCTURE PROJECT; CASE AT BAR. —** The Court finds that, indeed, respondent is liable for gross misconduct. As the CA explained in its above-stated Decision in the petition for *certiorari*, respondent failed to heed the mandatory ban imposed by P.D. No. 1818 and R.A. No. 8975 against a government infrastructure project, which the rural electrification project certainly was. He thereby likewise obstinately disregarded this Court's various circulars enjoining courts from issuing TROs and injunctions against government infrastructure projects in line with the proscription under R.A. No. 8975. *Apropos* are *Gov. Garcia v. Hon. Burgos* and *National Housing Authority v. Hon. Allarde* wherein this Court stressed that P.D. No. 1818 expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of a government infrastructure project. Reiterating the prohibitory mandate of P.D. No. 1818, the Court in *Atty. Caguioa v. Judge Laviña* faulted a judge for grave misconduct for issuing a TRO against a government infrastructure project thus: x x x It appears that respondent is either feigning a misunderstanding of the law or openly manifesting a contumacious indifference thereto. In any case, his disregard of the clear mandate of PD 1818, as well as of the Supreme Court Circulars enjoining strict compliance therewith, constitutes grave misconduct and conduct prejudicial to the proper administration of justice. His claim that the said statute is inapplicable to his January 21, 1997 Order extending the dubious TRO is but a contrived subterfuge to evade administrative liability. **In resolving matters in litigation, judges should endeavor assiduously to ascertain the facts and the applicable laws. Moreover, they should exhibit more than just a cursory acquaintance with statutes and procedural rules. Also, they are expected to keep**

abreast of and be conversant with the rules and the circulars which the Supreme Court has adopted and which affect the disposition of cases before them. Although judges have in their favor the presumption of regularity and good faith in the performance of their judicial functions, **a blatant disregard of the clear and unmistakable terms of the law obviates this presumption and renders them susceptible to administrative sanctions**. The pronouncements in *Caguioa* apply as well to respondent. The questioned acts of respondent also constitute gross ignorance of the law for being patently in disregard of simple, elementary and well-known rules which judges are expected to know and apply properly.

4. **ID.; ID.; ID.; ID.; ADMINISTRATIVE COMPLAINT NOT DISMISSED WITH THE RETIREMENT OF JUDGE; FINE IMPOSED AS ALTERNATIVE SANCTION. —** Respondent's retirement in the interim does not per se warrant the dismissal of the administrative complaint. IN FINE, respondent is guilty of **gross misconduct *and* gross ignorance of the law**, which are serious charges under Section 8 of Rule 140 of the Rules of Court. He having retired from the service, a fine in the amount of ₱40,000 is imposed upon him, the maximum amount fixed under Section 11 of Rule 140 as an alternative sanction to dismissal or suspension.

APPEARANCES OF COUNSEL

Medado Sinsuat & Associates for complainants.

D E C I S I O N

CARPIO MORALES, *J.*:

The administrative case against Judge Vicente A. Hidalgo (respondent) who, during the pendency of this case, retired[1] as presiding judge of the Regional Trial Court (RTC), Branch 37, Manila has its beginnings from the receipt on November 17, 2003 by the Office of the Court Administrator (OCA) of a copy of a "Motion to Resolve Defendants' Motion for Reconsideration"

[1] Judge Hidalgo retired compulsorily from the service on July 19, 2006.

filed by counsels for the defendants in Civil Case No. 03106921, "*Nerwin Industries Corp. v. PNOC-Energy Development Corporation, et al.,*" herein complainants Attys. Datu Omar S. Sinsuat and Mariano H. Paps.

In their "Motion to Resolve Defendants' Motion for Reconsideration"[2] (the Motion), complainants questioned, among other things, the authority of respondent to issue in the above-said civil case a Temporary Restraining Order (TRO) and a writ of preliminary injunction enjoining the therein defendant Philippine National Oil Company — Energy Development Corporation (PNOC-EDC) from holding a bidding for wooden poles required for the government's Accelerated Rural Electrification Program, otherwise known as the "O-Ilaw" Project.

Complainants claimed that in issuing the TRO and injunction, respondent disregarded the clear proscription of Presidential Decree (P.D.) No. 1818[3] and Republic Act (R.A.) No. 8975[4] and this Court's Administrative Circular No. 11-2000[5] of November 13, 2000 against the issuance of TROs and writs of injunction on government infrastructure projects.

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

[3] PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS IN CASES INVOLVING INFRASTRUCTURE AND NATURAL RESOURCE DEVELOPMENT PROJECTS OF, AND PUBLIC UTILITIES OPERATED BY, THE GOVERNMENT.

[4] 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.

[5] RE: BAN ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS OR WRITS OF PRELIMINARY PROHIBITORY OR MANDATORY INJUNCTIONS IN CASES INVOLVING GOVERNMENT INFRASTRUCTURE PROJECTS.

By letter dated April 24, 2004 to the OCA,[6] Atty. Paps, who was required by the OCA upon receipt of a copy of the Motion to expound on his and Atty. Sinsuat's allegations therein, contended that respondent issued the TRO despite a clear showing that the plaintiff in Civil Case No. 03106921 did not have a cause of action against the PNOC- EDC,[7] and that a critical government infrastructure project was involved.

Atty. Paps cited instances which, to him, indicated respondent's bias against the PNOC-EDC, including respondent's declaring PNOC-EDC and its co-defendants in default despite their reservation to file a Motion to Dismiss and/or appropriate responsive pleading pending resolution of the incidents in the case, and respondent's disqualifying him as PNOC-EDC's counsel despite grant of express authority to him to act as such from the Office of the Government Corporate Counsel.

In compliance with the directive of the OCA for him to comment[8] on Atty. Paps' letter, respondent informed the OCA by his Comment submitted on July 15, 2004[9] that, *inter alia,* he denied PNOC-EDC's motions for reconsideration to set aside order of default and to admit answer on December 29, 2003 as they were the subject of a petition for *certiorari* before the Court of Appeals (CA).

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[6] *Rollo*, p. 5.

[7] Atty. Paps claimed that while Nerwin failed to prove its allegations of conspiracy between the National Electrification Administration (NEA) and the PNOC-EDC, the latter was able to show that there was no valid and factual basis for Nerwin's allegations that: (1) there was a contract between NEA and Nerwin; (2) NEA channeled the fund for the rural electrification project to PNOC-EDC; (3) NEA and PNOC-EDC illegally tried to invalidate the award to Nerwin or otherwise render it ineffective; (4) the bidding to be conducted by the PNOC-EDC is the same as IPB 80 of NEA in circumvention of the injunction issued against NEA in another case in another court; and (5) PNOC-EDC should be considered as illegally dealing in the rural electrification project.

[8] *Rollo*, p. 9. The 1st endorsement dated June 23, 2004 was signed by then Assistant Court Administrator Carlos L. de Leon.

[9] *Id.* at 10.

By letter dated July 22, 2004,[10] Atty. Paps drew attention to respondent's non-refutation of the charge that he issued the questioned TRO and writ of preliminary injunction against a critical government infrastructure project. He reiterated the instances which to him showed respondent's bias against the PNOC-EDC.

Complainants sent the OCA yet another letter dated December 9, 2004[11] in which they formally requested that respondent be held liable for "grave misconduct and gross ignorance of the law," informing that their above-mentioned petition for *certiorari*, docketed as CA-G.R. No. 83144, was granted by the CA by Decision of October 22, 2004.[12] Complainants highlighted the CA's finding that respondent gravely abused his discretion in issuing the TRO/preliminary injunction, "a palpable violation of RA 8975 which was x x x already existing at the time respondent Judge issued the assailed Orders" and "in blatant disregard of a 'simple, comprehensible and unequivocal mandate (of PD 1818) prohibiting the issuance of injunctive writs relative to government infrastructure projects.'"

By letter of July 6, 2005,[13] the OCA informed complainants, however, that the complaint against respondent could not be given due course as it failed to comply with Section 1 of Rule 140 of the Rules of Court,[14] as amended by A.M. No.

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[10] *Id*. at 21.

[11] *Id*. at 25-27.

[12] Entitled *PNOC-Energy Development Corporation and Ester Guerzon (Chairman, Bids and Awards Committee) v. Nerwin Industries Corporation and Hon. Vicente A. Hidalgo, in his capacity as Presiding Judge of the Regional Trial Court of Manila-Branch 37.*

[13] *Rollo*, p. 36. The letter from OCA was signed by then Court Administrator, now Justice Presbitero J. Velasco, Jr.

[14] Section 1 of Rule 140 of the Rules of Court states:

> SECTION 1. How instituted. — Proceedings for the discipline of Judges or regular and special courts and Justices of the Court of Appeals and the *Sandiganbayan* may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons

01-08-10-SC.[15] Complainants countered that the complaint against respondent had been set in motion as early as 2003 as the record of exchanges between them, the OCA and respondent would show.[16] These exchanges substantially instituted the complaint against respondent, they argued.

Respondent thereafter sought the dismissal of the complaint firstly on the basis of the OCA's denial thereof of due course.[17] Adverting to the Court's Resolution of October 15, 2003 in A.M. No. 03-10-01-SC,[18] respondent moreover submitted that the complaint against him should be dismissed as it must be considered filed only on November 8, 2006 when Atty. Sinsuat complied with the resolution of the OCA requiring the submission of a copy of the October 22, 2004 Decision of the CA. As such, the filing of the complaint was made after his compulsory retirement on July 19, 2006 at which time the Court no longer had administrative jurisdiction over him, he posited.

At the same time, respondent argued that to allow the complaint to prosper would amount to a denial of due process as he was never informed of the nature of and the specific violations he

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who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

[15] Dated September 11, 2001.

[16] *Rollo*, pp. 29-30. Letter of September 26, 2005.

[17] *Id.* at 60-62, 63-65. Letter dated December 7, 2006.

[18] RESOLUTION PRESCRIBING MEASURES TO PROTECT MEMBERS OF THE JUDICIARY FROM BASELESS AND UNFOUNDED ADMINISTRATIVE COMPLAINTS. Respondent specifically underscored the following provision of A.M. No. 03-10-01-SC:

> 2. If the complaint is (a) **filed within six months before the compulsory retirement of a Justice or Judge**; (b) for an alleged cause of action that occurred at least a year before such filing; and (c) shown *prima facie* that it is intended to harass the respondent, it must forthwith be recommended for dismissal. x x x.

was alleged to have committed, hence, his inability to intelligently answer them.

Respondent particularly lamented not having received any further communication after the July 6, 2005 letter of the OCA. Nor of having been furnished copies of the July 19, 2006 letter of then Court Administrator Lock requiring complainants to furnish the OCA a copy of the October 22, 2004 CA Decision, and complainants' compliance of November 8, 2006.

By Resolution of February 5, 2007,[19] the Court required the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings filed. By letter dated March 19, 2007, complainants manifested that they were so willing.[20]

By Memorandum dated October 1, 2007, the OCA to which the complaint was referred for evaluation, report and recommendation[21] narrowed down the issues to whether: (1) the complaint may be given due course despite non-compliance with Section 1, Rule 140 of the Rules of Court; (2) the resolution of the complaint, if it be given due course, would amount to a denial of due process on the part of respondent; and (3) respondent was administratively liable for gross ignorance of the law.

The OCA found sufficient allegations of administrative wrongdoing in complainants' motions and letters. The letters and motions not having been verified, the OCA treated them as anonymous complaint, hence, their directive for complainants to expound on their allegations and to furnish the OCA with a certified copy of the October 22, 2004 Decision of the CA.

Debunking respondent's claim of denial of due process, the OCA emphasized that he was informed of the allegations against

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[19] *Rollo*, p. 66.

[20] *Id*. at 68-70. Complainants reiterated their manifestation on January 4, 2008 pursuant to the Court's Resolution of November 12, 2007; *id*. at 94.

[21] *Id*. at 89-93. The Memorandum was signed by then Court Administrator Lock.

him and did not deny issuing the assailed TRO; he merely stated that the matter had already been raised on *certiorari* to the CA.

The OCA found respondent to have displayed gross ignorance of the law in issuing the questioned TRO in light of the provisions of P.D. No. 1818 and R.A. No. 8975.

Noting that respondent was previously fined in A.M. Nos. RTJ-03-1756[22] and RTJ-05-1959[23] in the amount of ₱11,000 and ₱20,000, respectively, and warned that a repetition of the same or similar act would be dealt with severely, the OCA recommended that he be found liable for **gross ignorance of the law**, a serious charge under Section 8 of Rule 140 of the Rules of Court.[24] As respondent had, however, retired from the service, the OCA recommended that he be fined in the amount of ₱40,000.

The report *cum* recommendation of the OCA is well-taken.

Section 1 of Rule 140 of the Rules of Court provides:

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[22] *Gonzales v. Judge Hidalgo*, 449 Phil. 336 (2003). In this case, Judge Hidalgo was ruled guilty of gross inefficiency for his failure to decide motions on time. The Court imposed upon him a fine of ₱11,000 with a stern warning against repetition of the same or similar act.

[23] *Republic v. Hidalgo*, December 9, 2005, 477 SCRA 32. The Court found Judge Hidalgo administratively liable therein for gross ignorance of the law for issuing a writ of execution and pronouncing costs of the suit against the government. He was fined in the amount of ₱20,000 and sternly warned that a repetition of the same or similar act will be dealt with more severely.

[24] SEC. 11. *Sanctions*. — If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however,* That the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

SECTION 1. *How instituted.* — Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the *Sandiganbayan* may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Under the above-quoted Rule, there are three ways by which administrative proceedings against judges may be instituted: (1) *motu proprio* by the Supreme Court; (2) upon *verified complaint* with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an *anonymous complaint* supported by public records of indubitable integrity.

While the copy of the Motion which complainants furnished the OCA was unverified as were their subsequent letters, the OCA correctly treated them as anonymous complaint. The Court has, on several occasions, been entertaining complaints of this nature[25] especially where respondents admitted the material allegations of the complainants[26] as in respondent's case.

Anonymous complaints, as a rule, are received with caution. They should not be dismissed outright, however, where their averments may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence.[27]

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[25] Vide *Re: Anonymous Complaint dated February 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Br. 12, Ormoc City*, A.M. No. RTJ-05-1955, May 25, 2007, 523 SCRA 175; *Re: Anonymous Complaint Against Judge Edmundo T. Acuña, RTC, Caloocan City, Branch 123*, A.M. No. RTJ-04-1891, July 28, 2005, 464 SCRA 250; *Atty. Macalintal v. Judge Teh*, 345 Phil. 871 (1997).

[26] *Atty. Macalintal v. Judge Teh, supra* at 876.

[27] *Anonymous Complaint against Pershing T. Yared, Sheriff III, Municipal Trial Court in Cities, Canlaon City*, A.M. No. P-05-2015, June 28, 2005, 461 SCRA 347, 355, citing *Anonymous Complaint Against Gibson A. Araula*, 171 Phil. 427, 427 (1978).

Here, the motion and letters sufficiently averred the specific acts upon which respondent's alleged administrative liability was anchored. And the averments are verifiable from the records of the trial court and the CA's Decision.

Respondent's challenge against this Court's jurisdiction over the present case is unavailing. Indeed, the pleadings of the parties and the communications of the OCA clearly show that the disciplinary proceeding against him was set in motion in November 2003 when the OCA received a copy of complainants' Motion.

Respondent's retirement in the interim does not per se warrant the dismissal of the administrative complaint.[28]

The Court finds that, indeed, respondent is liable for gross *misconduct*. As the CA explained in its above-stated Decision in the petition for *certiorari*, respondent failed to heed the mandatory ban imposed by P.D. No. 1818 and R.A. No. 8975 against a government infrastructure project,[29] which the rural electrification project certainly was. He thereby likewise obstinately disregarded this Court's various circulars[30] enjoining courts from issuing TROs and injunctions against government infrastructure projects in line with the proscription under R.A. No. 8975. *Apropos* are *Gov. Garcia v. Hon. Burgos*[31] and *National Housing*

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[28] *Liguid v. Judge Camano, Jr.*, 435 Phil. 695, 705 (2002); *Cabañero v. Judge Cañon*, 417 Phil. 754, 757 (2001); *Cabarloc v. Cabusora*, 401 Phil. 376, 385 (2000).

[29] *Republic of the Philippines v. Silerio*, 338 Phil. 784, 791 (1997) held that the term "infrastructure projects" means "construction, improvement and rehabilitation of roads, and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment."

[30] Administrative Circular (A.C.) Nos. 13-93 dated March 5, 1993, 68-94 dated November 3, 1994, 07-99 dated June 25, 1999, and 11-2000 dated November 13, 2000.

[31] 353 Phil. 740, 763 (1998).

Authority v. Hon. Allarde[32] wherein this Court stressed that P.D. No. 1818 expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of a government infrastructure project.

Reiterating the prohibitory mandate of P.D. No. 1818, the Court in *Atty. Caguioa v. Judge Laviña*[33] faulted a judge for grave misconduct for issuing a TRO against a government infrastructure project thus:

x x x It appears that respondent is either feigning a misunderstanding of the law or openly manifesting a contumacious indifference thereto. In any case, his disregard of the clear mandate of PD 1818, as well as of the Supreme Court Circulars enjoining strict compliance therewith, constitutes grave misconduct and conduct prejudicial to the proper administration of justice. His claim that the said statute is inapplicable to his January 21, 1997 Order extending the dubious TRO is but a contrived subterfuge to evade administrative liability.

In resolving matters in litigation, judges should endeavor assiduously to ascertain the facts and the applicable laws. Moreover, they should exhibit more than just a cursory acquaintance with statutes and procedural rules. Also, they are expected to keep abreast of and be conversant with the rules and the circulars which the Supreme Court has adopted and which affect the disposition of cases before them.

Although judges have in their favor the presumption of regularity and good faith in the performance of their judicial functions, **a blatant disregard of the clear and unmistakable terms of the law obviates this presumption and renders them susceptible to administrative sanctions.** (Emphasis and underscoring supplied)

The pronouncements in *Caguioa* apply as well to respondent.

The questioned acts of respondent also constitute gross ignorance of the law for being patently in disregard of simple,

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[32] 376 Phil. 147, 155 (1999).

[33] 398 Phil. 845, 858-859 (2000).

elementary and well-known rules[34] which judges are expected to know and apply properly.

IN FINE, respondent is guilty of **gross misconduct** *and* **gross ignorance of the law**, which are serious charges under Section 8 of Rule 140 of the Rules of Court. He having retired from the service, a fine in the amount of ₱40,000 is imposed upon him, the maximum amount fixed under Section 11 of Rule 140 as an alternative sanction to dismissal or suspension.

WHEREFORE, the Court finds respondent, then Judge Vicente A. Hidalgo, *GUILTY* of gross misconduct and gross ignorance of the law and imposes upon him a fine of ₱40,000, to be deducted from his retirement benefits.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 129036. August 6, 2008]

COL. ARTURO C. FERRER (RET.), *petitioner, vs.* **HON. OFFICE OF THE OMBUDSMAN, ROMEO G. DAVID, Former Administrator, JOEMARI D. GEROCHI,**

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[34] *Lagcao v. Gako, Jr.*, A.M. No. RTJ-04-1840, August 2, 2007, 529 SCRA 55, 63; *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, July 14, 2004, 434 SCRA 315, 320; *Atty. Osumo v. Judge Serrano*, 429 Phil. 626, 632 (2002); *Golangco v. Villanueva*, 343 Phil. 937, 946-947 (1997).

Administrator, National Food Authority (NFA), FRANCISCO G. CORDOBA, JR., chairman, PBAC, MARCELINO B. AGANA IV, EVANGELINE V. ANAGO, BENJAMIN D. JAVIER, and CELIA Z. TAN, Members, PBAC, *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE; PREROGATIVE OF INVESTIGATION OFFICER WHETHER OR NOT TO GIVE A COMPLAINT DUE COURSE; CASE AT BAR. —** Under Rule II, Section 2 of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), the investigation officer, upon evaluation of the complaint, shall recommend whether it may be: a) dismissed outright for want of palpable merit; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate office or official for fact-finding investigation; e) referred for administrative adjudication; or f) subjected to a preliminary investigation. Therefore, the prerogative as to whether or not a complaint may be given due course belongs exclusively to the Office of the Ombudsman, through its assigned investigation officer, who in this case was GIO Gruta. It is apparent that GIO Gruta had carefully studied the complaint which, indeed, raised the very same arguments as in OMB-0-96-1552 pertinent to the alleged collusion between Metroguard and DASIA in the very same public bidding held by NFA on June 21, 1994 and the purported unwarranted benefits given to these security agencies by respondents when they were awarded the security service contracts for the NFA areas of operations said agencies tendered their bids for. Concurring with the recommendation of GIO Ginez-Jabalde in OMB-0-96-1552 to dismiss the complaint, similarly approved by then Ombudsman Desierto, does not necessarily indicate that GIO Gruta did not exercise her independent judgment in this case in concluding that the complaint lodged by petitioner lacks merit. To conduct a preliminary investigation when deemed unnecessary as the same issues being raised had already been resolved would be superfluous.

2. ID.; ID.; DUE PROCESS; ELUCIDATED. — As regards petitioner's allegation of denial of his right to due process, it should well be remembered that the essence of due process in administrative proceedings is an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. The requirements thereof are satisfied when the parties are afforded a fair and reasonable chance to air their side of the controversy at hand. Deprivation of due process cannot be successfully invoked where a party was given an opportunity to be heard on his motion for reconsideration.

3. ID.; ID.; OFFICE OF THE OMBUDSMAN; JURISDICTION OVER OFFENSES COMMITTED BY PUBLIC SERVANTS IN RELATION TO OFFICE, RESPECTED. — The jurisdiction of the Office of the Ombudsman to investigate and prosecute criminal cases pertains to violations of R.A. No. 3019, as amended, R.A. 1379, as amended, R.A. 6713, Title VII, Chapter II, Section 2 of the Revised Penal Code, and such other offenses committed by public officers and employees in relation to office. Verily, the Court has almost always adopted, and quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman has the power to dismiss a complaint outright without going through a preliminary investigation. To insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution, as well as R.A. No. 6770, saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive, or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissable, the Court shall respect such findings unless tainted with grave abuse of discretion. The Ombudsman has discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his judgment call. This rule is also practical. The work of the courts will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman in regard to the complaints filed before it, in much the same manner that the courts would be swamped with numerous cases if they are compelled to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint.

APPEARANCES OF COUNSEL

Rico B. Azurin for petitioner.
Luis Q.V. Uranza, Jr. & Associates for M.B. Agana.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and nullification of the Evaluation Report[1] of the Office of the Ombudsman thru then Graft Investigation Officer (GIO) I Bienvenida A. Gruta, dated October 25, 1996, recommending the dismissal of the complaint of petitioner in OMB-0-96-1986, entitled *"Arturo Ferrer v. Romeo David, et al.,"* and her Order[2] dated February 11, 1997, denying with finality petitioner's motion for reconsideration.

On April 6, 1993, then NFA Administrator respondent Romeo David (David) issued Special Order No. 04-07 on the basis of which the National Food Authority (NFA) Prequalification, Bids and Awards Committee (PBAC) for security services was formed. The PBAC was tasked to undertake the pre-qualification of prospective bidders, to evaluate the bids tendered, and to recommend to the Administrator the bids accepted for NFA's five areas of operation nationwide. The PBAC scheduled the pre-bidding conference and the bidding on June 4 and 18, 1993, respectively, but the same were reset to June 18 and 30, 1993 to give more time for participating bidders to comply with the documentary requirements.

Odin Security Agency (Odin), owned by petitioner, retired Col. Arturo C. Ferrer (Ferrer), opted to bid in NFA's Area III. Odin was disqualified during the accreditation or pre-qualification stage, but Odin protested and the disqualification was later reconsidered.

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[1] *Rollo*, pp. 35-37.

[2] *Id.* at 39-43.

On June 21, 1994, the PBAC conducted the public bidding for the security services of NFA. Among the participants in the said public bidding were Metroguard and Protective Security Agency of the Philippines (Metroguard) and Davao Security and Investigation Agency, Inc. (DASIA). Metroguard and DASIA were admittedly "sister" agencies. On one hand, Metroguard selected Areas III and IV as its preferred areas, with Area V as its conditional area. DASIA, on the other hand, chose Area IV as its preferred area and Areas III and V as conditional areas.

Having perceived a collusion between DASIA and Metroguard, not only because of their identical bid price, but also for having respectively withdrawn their bid proposals in an area or areas in favor of the other (Metroguard withdrew its bid proposal in Area V in favor of DASIA, and DASIA also yielded its bid proposals in Areas III and IV in favor of Metroguard), the other participating bidders, including Odin, protested.

Respondent David sought an opinion from the Office of the Government Corporate Counsel (OGCC) regarding the alleged collusion between Metroguard and DASIA. In answer, the OGCC issued Opinion No. 324[3] dated December 19, 1994 stating that the bid proposal of both Metroguard and DASIA should be rejected for being collusive as indicated by the identical bid cost, especially coming from "sister" agencies. This opinion was reiterated by the OGCC in its Opinion No. 056[4] dated March 2, 1995 and Opinion No. 081[5] dated March 28, 1995. Consequently, the bids of the two agencies were rejected by NFA.

Aggrieved after the denial of its request for reconsideration, DASIA sought judicial intervention by filing a complaint[6] against respondents David and Francisco G. Cordoba, Jr. (Cordoba), as NFA Administrator and PBAC Chairman, respectively, before

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[3] *Id.* at 85-91.

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

[5] *Id.* at 96-100.

[6] *Id.* at 102-113.

the Regional Trial Court (RTC) of Davao City for the "Declaration of Disqualification of Plaintiff in the Public Bidding Illegal, with Prayer for Preliminary Injunction and for the Immediate Issuance of Temporary Restraining Order." Said case was docketed as Civil Case No. 23, 531-95.

After trial, the RTC rendered its Decision[7] on November 24, 1995 declaring the rejection of DASIA's bid invalid and illegal, in violation of its right to due process, and ordering David and Cordoba to consider its bid in determining the award of the contract for security services in NFA areas of operation nationwide.

David and Cordoba appealed the Decision of the RTC to the Court of Appeals (CA). During the pendency of the appeal, respondents proceeded to award the security service contracts to both Metroguard and DASIA.

This prompted petitioner to file on August 23, 1996 a Complaint-Affidavit against respondents before the Office of the Ombudsman, charging them with violations of Section 3(e)[8] and (g)[9] of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act). The complaint was docketed as OMB-0-96-1986.

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[7] *Id.* at 115-128.

[8] ***Section 3. Corrupt practices of public officers.*** — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[9] (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The Office of the Ombudsman dismissed outright the complaint for lack of merit based on the Evaluation Report of GIO Gruta dated October 25, 1996. The said report was approved by then Ombudsman Aniano A. Desierto on November 27, 1996. Ratiocinating on her recommendation for the dismissal of the Complaint-Affidavit, GIO Gruta said —

Curiously, a phrase, "RELATED (TO) OMB-0-96-1552" is written on the first page of the original complaint-affidavit. A thorough comparative study of the instant complaint and that of OMB-0-96-1552 which is entitled "*Eugenio M. Revita vs. Romeo G. David, et al*., reveals the following observations:

1). the two cases have identical respondents;

2). they have identical issues as enumerated above;

3). the complainants are different persons although both represent security agencies which participated in the bidding conducted by NFA for security services last June 21, 1994;

4). a preliminary investigation was already completed on OMB-0-96-1552 and a resolution consisting of 13 pages dismissing the complaint was submitted for review.

The pertinent findings of Atty. Roline M. Ginez-Jabalde in her Resolution dated October 16, 1996, are reproduced below, to wit:

"In our appreciation of the facts involved in this case, we found out that respondent Acting NFA Administrator Gerochi and the Chairman as well as the members of the PBAC for Security Services cannot be faulted for awarding the security services to DASIA for Area III; Metroguard for Area IV; and ACD Security & Investigation Agency for Area V.

The issue on collusion between DASIA and Metroguard has been resolved by the Regional Trial Court Branch 17 of Davao City, thus any hindrance brought about by the opinion of OGCC about the issue of collusion had been put to rest. XXX" (page 10, 4th & 5th par.)

On the issue of giving undue preference to ACD Security & Investigation Agency which was awarded a contract despite alleged lack of valid bid bond, Atty. Jabalde finds, to wit:

"x x x The bid of ACD was conditionally accepted as it was able to submit the original endorsement from the GSIS stating the effect

that the original bid bond has been extended and the amount of coverage increased subject however to its submission of the original bid bond or a photocopy thereof on or before nine o'clock in the morning of the following day which it did." (page 11, 2nd par.)

The undersigned concurs with the above findings which have also settled the three issues raised in the instant complaint.[10]

Petitioner moved to reconsider the dismissal of his Complaint-Affidavit.[11] Respondents David,[12] Joemari D. Gerochi (Gerochi),[13] then Acting NFA Administrator, Cordoba, Evangeline V. Anago (Anago), Benjamin D. Javier (Javier) and Celia Z. Tan (Tan)[14] opposed the motion for reconsideration.

In an Order dated February 11, 1997, the Office of the Ombudsman, thru GIO Gruta, denied with finality the motion for reconsideration. To explain the denial, the said Order stated that —

It is interesting to note that the grounds enumerated by the movant do not contain any true issue on which may be based reconsideration of the resolution in this case. But for the sake of discussion, undersigned investigator chooses to tackle the second and eight[h] grounds advanced by the movant.

Movant cited that there are different facts and circumstances attending his complaint. One of these facts being that Odin was initially predisqualified by the NFA-PBAC. The reason for this is the robbery incident at Fort Bonifacio Warehouse of NFA which involved Odin's security guards (Joint comments dated January 30, 1997). On motion for reconsideration, the new set of PBAC members prequalified Odin to participate in the bidding for security agencies scheduled last June 30, 1993.

Movant also mentioned that undersigned investigator failed to make an inquiry about his charge for violation of Section 4,

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[10] *Rollo*, pp. 36-37.

[11] *Id.* at 141-147.

[12] *Id.* at 149-150.

[13] *Id.* at 153-159.

[14] *Id.* at 158-168.

R.A. 5487 as amended which is penalized by cancellation of license to operate security agency.

Clearly, the Office of the Ombudsman has no authority to investigate charges of violation of R.A. 5487, otherwise known as Private Security Agency Law.

Relative to the assertion that undersigned investigator abdicated her sworn duty to evaluate a complaint on its own merit, it should be emphasized that the undersigned spent precious hours studying the complaint and its attached documents before she arrived at the conclusion that the case and Revita's complaint have identical charges and issues arising from the same bidding participated in by the complainants. Movant himself accepted the fact that the two cases are similar having identical respondents, issues and charges. When there are no more legal or factual issues to be resolved, there is no need to conduct preliminary investigation.[15]

Hence, this petition raising the following issues —

6.1 Whether or not petitioner's complaint (OMB-0-96-1986) may be dismissed on the basis of a resolution in another complaint (OMB-0-96-1552) filed by another complainant (Eugenio M. Revita).

6.2. Whether or not the decision of the RTC-Davao, Br. 17, in Civil Case No. 23, 531 may be validly used as the basis by respondents for the award of the contracts for security services in favor of Metroguard and DASIA, notwithstanding the pendency of the appeal of the decision with the Court of Appeals, and despite the opinion of the OGCC that Metroguard and DASIA must be disqualified from the public bidding on the ground of collusion between them.

6.3 Whether or not the Office of the Ombudsman has no authority to investigate charges of violation of Republic Act 5487, otherwise known as the Private Security Agency Law, to determine the criminal liability of respondents.[16]

The petition must fail.

First. Petitioner contends that in issuing the questioned Evaluation Report, GIO Gruta failed to consider the merits of

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[15] *Id.* at 40-41.

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

his complaint but simply adopted the Resolution of GIO Ginez-Jabalde in OMB-0-96-1552 which is tantamount to a violation of his right to due process. We disagree.

Under Rule II, Section 2 of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), the investigation officer, upon evaluation of the complaint, shall recommend whether it may be:

a) dismissed outright for want of palpable merit;
b) referred to respondent for comment;
c) indorsed to the proper government office or agency which has jurisdiction over the case;
d) forwarded to the appropriate office or official for fact-finding investigation;
e) referred for administrative adjudication; or
f) subjected to a preliminary investigation.

Therefore, the prerogative as to whether or not a complaint may be given due course belongs exclusively to the Office of the Ombudsman, through its assigned investigation officer, who in this case was GIO Gruta. It is apparent that GIO Gruta had carefully studied the complaint which, indeed, raised the very same arguments as in OMB-0-96-1552 pertinent to the alleged collusion between Metroguard and DASIA in the very same public bidding held by NFA on June 21, 1994 and the purported unwarranted benefits given to these security agencies by respondents when they were awarded the security service contracts for the NFA areas of operations said agencies tendered their bids for. Concurring with the recommendation of GIO Ginez-Jabalde in OMB-0-96-1552 to dismiss the complaint, similarly approved by then Ombudsman Desierto, does not necessarily indicate that GIO Gruta did not exercise her independent judgment in this case in concluding that the complaint lodged by petitioner lacks merit. To conduct a preliminary investigation when deemed unnecessary as the same issues being raised had already been resolved would be superfluous.

As regards petitioner's allegation of denial of his right to due process, it should well be remembered that the essence of due process in administrative proceedings is an opportunity to explain

one's side or to seek reconsideration of the action or ruling complained of. The requirements thereof are satisfied when the parties are afforded a fair and reasonable chance to air their side of the controversy at hand. Deprivation of due process cannot be successfully invoked where a party was given an opportunity to be heard on his motion for reconsideration.[17]

Second. Petitioner argues that the Office of the Ombudsman was mistaken when it did not see the error on the part of the Administrator and the PBAC of NFA in awarding to Metroguard and DASIA the security service contracts on the basis of the Decision of the RTC, Branch 17, Davao City despite the pendency of its appeal and despite the opinions of the OGCC that there was collusion between the said security agencies. The argument does not persuade.

It bears mentioning that the Decision of the RTC, Branch 17, Davao City already passed upon the opinions of the OGCC and ruled that there was no collusion between Metroguard and DASIA. During the pendency of the appeal before the CA, this Court promulgated its Decision on February 9, 1996 in G.R. Nos. 115121-25 entitled *"National Food Authority v. Court of Appeals,"* declaring illegal and abhorrent the negotiated security service contracts awarded by NFA to several private security agencies in default of a public bidding.

Relevant to the said ruling, the NFA, in 1993, decided to conduct a public bidding for security services in its various areas of operations upon the expiration of the then existing security service contracts. The then incumbent security agencies failed to pre-qualify so that they filed different cases with the RTCs of Quezon City questioning their disqualification and prayed for the issuance of temporary restraining orders (TROs). The RTCs issued the TROs prayed for and later issued writs of preliminary injunction preventing NFA from proceeding with the bidding. Notices were given to the incumbent security agencies that their extended contracts would not be renewed beyond

[17] *Ledesma v. Court of Appeals,* G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452-453; *Paat v. Court of Appeals*, 334 Phil. 146, 156 (1997).

August 16, 1993 and that then NFA Administrator David contracted the services of new security agencies in the interim to protect the properties and offices of NFA nationwide. The incumbent security agencies filed separate complaints with the RTCs of Quezon City praying that the NFA be prevented from terminating their security services and from implementing the monthly negotiated security service contracts with the new security agencies. The RTCs issued separate orders granting these reliefs. These orders were elevated to the CA in a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or TRO to enjoin the RTCs from enforcing their writs in favor of the incumbent security agencies. The CA set aside the writs of preliminary injunction insofar as they ordered the NFA to desist from implementing the termination of the expired security service contracts but declared them legal insofar as they enjoined the NFA from awarding the negotiated security service contracts to the new agencies. After denial of its motion for reconsideration, the NFA went to this Court to question the finding of legality of the writs of preliminary injunction relevant to the award of the new security service contracts. This Court issued a TRO enjoining the implementation of the decision of the CA but directed the NFA to proceed with the restrained bidding. Later, this Court declared the negotiated contracts void.

Thus, with the directive of this Court to proceed with the restrained public bidding for the security services contracts and the declaration that the existing negotiated contracts were illegal, together with the Decision of the RTC, Branch 17, Davao City that there was no collusion between Metroguard and DASIA, which had not been reversed by a higher court, David deemed it fit to award the contracts to Metroguard and DASIA for the areas they bidded on, considering that their bids were found by the PBAC as the most advantageous in order to protect the NFA facilities.

Since the CA had not reversed and set aside the decision of the RTC, Branch 17, Davao City at the time GIO Gruta reviewed petitioner's complaint for alleged violation of Section 3(e) and (g) of R.A. No. 3019, the RTC Decision remained controlling.

Thus, GIO Gruta was correct in dismissing the charge for lack of merit.

Third. Petitioner posits that the Office of the Ombudsman erred in ruling that it had no jurisdiction to investigate charges of violation of R.A. No. 5487 (Private Security Agency Law) for purposes of determining the probable criminal liability of respondents who were officials of NFA. This is erroneous.

The jurisdiction of the Office of the Ombudsman to investigate and prosecute criminal cases pertains to violations of R.A. No. 3019, as amended, R.A. No. 1379,[18] as amended, R.A. No. 6713,[19] Title VII, Chapter II, Section 2 of the Revised Penal Code, and such other offenses committed by public officers and employees in relation to office.[20]

On the other hand, in R.A. No. 5487, it is the Philippine National Police (PNP) that exercises general supervision over the operation of all private detective and watchman security guard agencies.[21] It has the exclusive authority to regulate and to issue the required licenses to operate security and protective agencies.[22]

In this case, in the absence of a declaration from the PNP that a violation of the said law was committed by Metroguard

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[18] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

[19] Code of Conduct and Ethical Standards for Public Officials and Employees.

[20] Rule II, Section 1, Administrative Order No. 07.

[21] Section 11. *Supervision of the Philippine Constabulary (now PNP).* — Upon approval of this Act, the Philippine Constabulary (now PNP) shall exercise general supervision over the operation of all private detective and watchman or security guard agencies.

[22] Section 6. *License Necessary.* — No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary (now PNP) which permit as approved is prerequisite in obtaining a license or license certificate x x x.

and DASIA, the act of the NFA officials in awarding the security service contracts to the said agencies after a showing that their bids were the most advantageous to the government is presumed to be valid.

Verily, the Court has almost always adopted, and quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman has the power to dismiss a complaint outright without going through a preliminary investigation. To insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution, as well as R.A. No. 6770,[23] saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive, or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless tainted with grave abuse of discretion. The Ombudsman has discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his judgment call.[24]

This rule is also practical. The work of the courts will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman in regard to the complaints filed before it, in much the same manner that the courts would be swamped with numerous cases if they are compelled to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint.[25]

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not

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[23] The Ombudsman Act of 1989.

[24] *Soriano v. Marcelo*, G.R. No. 163017, June 18, 2008.

[25] *Albay Accredited Constructors Association, Inc. v. Desierto,* G.R. No. 133517, January 30, 2006, 480 SCRA 520, 536.

based on law and evidence but on caprice, whim and despotism.[26] No such circumstance obtains in this case.

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

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 147597. August 6, 2008]

CLARISSA U. MATA, doing business under the firm name BESSANG PASS SECURITY AGENCY, *petitioner, vs.* **ALEXANDER M. AGRAVANTE, EDDIE E. SANTILLAN, PATRICIO A. ARMODIA, ALEJANDRO A. ALMADEN, and HERMENEGILDO G. SALDO,** *respondents.*

SYLLABUS

CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF ABUSE OF RIGHTS AND ACTS *CONTRA BONOS MORES*; APPLICATION NOT WARRANTED IN CASE AT BAR. — It has been held that Article 19, known to contain what is commonly referred to as the principle of abuse of rights, is not a panacea for all human hurts and social grievances. The object of this article is to set certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: act with justice, give everyone his due, and observe

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[26] *Feliciano Galvante v. Hon. Orlando C. Casimiro*, *et al.,* G.R. No. 162808, April 22, 2008.

honesty and good faith. Its antithesis is any act evincing bad faith or intent to injure. Article 21 refers to acts *contra bonos mores* and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good custom, public order or public policy; and (3) is done with intent to injure. The common element under Articles 19 and 21 is that the act complained of must be intentional, and attended with malice or bad faith. There is no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not this principle has been violated, resulting in damages under Articles 20 and 21, or other applicable provision of law, depends on the circumstances of each case. In the case before us, as correctly pointed out by the CA, the circumstances do not warrant an award of damages. Thus, the award of ₱1,000,000.00 as moral damages is quite preposterous. We agree with the appellate court that in the action of the respondents, there was no malicious intent to injure petitioner's good name and reputation. The respondents merely wanted to call the attention of responsible government agencies in order to secure appropriate action upon an erring private security agency and obtain redress for their grievances. So, we reiterate the basic postulate that in the absence of proof that there was malice or bad faith on the part of the respondents, no damages can be awarded.

APPEARANCES OF COUNSEL

Rico B. Azurin for petitioner.
Dinsay Agravante Gocuan & Yu Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* assailing the decision[1] of the Court of Appeals (CA) which dismissed petitioner's complaint for damages filed against the respondents.

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[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Perlita J. TriaTirona, concurring; *rollo*, pp. 38-44.

The antecedent facts are as follows:

Respondents Eddie E. Santillan, Patricio A. Armodia, Alejandro A. Almaden and Hermenegildo G. Saldo were former security guards of the Bessang Pass Security Agency, owned by herein petitioner Clarissa Mata.

On October 27, 1993, the respondents, assisted by their counsel, Atty. Alexander Agravante, filed a complaint with the National Labor Relations Commission (NLRC) in Cebu City for non-payment of salaries/wages and other benefits.[2] Subsequently, they filed an affidavit-complaint with the Philippine National Police (PNP) in Camp Crame, Quezon City requesting an investigation of the Bessang Pass Security Agency and cancellation of its license to operate as security agency for violation of labor laws. Copies of this affidavit-complaint were likewise sent to the following offices: (1) Office of the President, (2) Office of the Secretary of Public Works and Highways, (3) Office of the PNP Director General, (4) PNP Chief Superintendent Warlito Capitan, (5) Office of the DILG Secretary, (6) Ombudsman Conrado Vasquez and (7) Office of the Vice-President.

On January 6, 1994, petitioner instituted an action for damages against the respondents averring that respondents filed unfounded, baseless complaints before the NLRC for alleged violation of the labor laws and with the PNP for cancellation of its license to operate. She further alleged that by furnishing the government offices copies of these complaints, especially the Department of Public Works and Highways which was its biggest client, the agency's reputation was besmirched, resulting in the loss of contracts/projects and income in the amount of at least ₱5,000,000.00. Petitioner then declared that respondents' deliberate and concerted campaign of hate and vilification against the Bessang Pass Security Agency violated the provisions of Articles 19, 20, and 21 of the Civil Code, and thus, prayed that the respondents be held jointly and severally liable to pay her the sum of ₱1,000,000.00 as moral damages, attorney's fees in the amount of ₱200,000.00 and other reliefs.

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[2] NLRC Case No. RAB-VII-10-0899-93.

On August 4, 1999, the trial court rendered judgment, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendants ordering the latter to pay plaintiff the sum of ONE MILLION (₱1,000,000.00) PESOS as moral damages.[3]

On the basis of the evidence adduced by the petitioner *ex parte*, the trial court found preponderant evidence enough to justify petitioner's cause of action. It gave credence to the petitioner's contentions that the respondents had no other motive in sending the letter to the seven (7) government offices except to unduly prejudice her good name and reputation. The trial court, however, did not award the sum of ₱5,000,000.00 as petitioner's estimated loss of income for being speculative.

On appeal, the CA reversed and set aside the trial court's decision. It dismissed the complaint for lack of merit.

Hence, this petition anchored on the following grounds:

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR, AMOUNTING TO GRAVE ABUSE OF DISCRETION WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 89 IN QUEZON CITY AND FURTHER CONCLUDED THAT RESPONDENTS' ACT OF FURNISHING COPIES OF THEIR LETTER-COMPLAINT NOT ONLY TO SEVEN (7) NATIONAL AGENCIES BUT ALSO TO PETITIONER'S BIGGEST CLIENT, WAS NOT TAINTED WITH BAD FAITH AND WITH THE SOLE MOTIVE TO MALIGN THE GOOD NAME AND REPUTATION OF PETITIONER.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN THE APPRECIATION OF FACTS AND APPLICATION OF LAWS, WHICH IF NOT RECTIFIED, WOULD CAUSE IRREPARABLE INJURY AND DAMAGE TO HEREIN PETITIONER.

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[3] *Rollo*, p. 75.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR, AMOUNTING TO GRAVE ABUSE OF DISCRETION, WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 89 IN QUEZON CITY, NOTWITHSTANDING RESPONDENTS HAVING BEEN DECLARED IN DEFAULT.[4]

Petitioner contends that the respondents were so driven by unrestrained hatred and revenge that they not only succeeded in disseminating the letter-complaint to the 7 government offices but to the DPWH, her biggest client, with the intention to destroy her reputation and, more importantly, her business. She posits that this would mean a loss of employment for numerous employees throughout the country who solely depend on the security agency for their existence, and that respondents obviously failed to see this fact. She claims that the respondents have abused their rights, to her prejudice, and that of the security agency which has tried very hard to protect its name and hard-earned reputation. Petitioner then concludes that the respondents have violated Articles 19 and 21 of the Civil Code and should be held liable for damages.[5]

We are not impressed. We are more in accord with the findings and conclusions of the respondent court that petitioner is not entitled to any award of damages. We agree with the respondent court's explanation, *viz.*:

In filing the letter-complaint (Exhibit "D") with the Philippine National Police and furnishing copies thereof to seven (7) other executive offices of the national government, the defendants-appellants may not be said to be motivated simply by the desire to "unduly prejudice the good name and reputation" of plaintiff-appellee. Such act was consistent with and a rational consequence of seeking justice through legal means for the alleged abuses defendants-appellants suffered in the course of their employment with plaintiff-appellee, which started with the case for illegal dismissal and non-payment of backwages and benefits earlier filed with the NLRC Regional

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

[5] *Id*. at 24.

Arbitration Branch in Cebu City. In exhausting the legal avenues to air their legitimate grievances, the paramount and overriding concern of the defendants-appellants — who had already suffered from retaliatory acts of their employer when they manifested their desire to take formal action on the violations of labor laws committed by employer – is to secure government intervention or action to correct or punish their employer, plaintiff-appellee, in accordance with the provisions of existing laws or rules and regulations which may be applicable to their situation. And in this process, the intervention of the Philippine National Police was sought in view of its mandated role of administrative supervision over security agencies like plaintiff-appellee.

Section 8 of Republic Act No. 5487, otherwise known as the "Private Security Agency Law," empowered the Chief of the former Philippine Constabulary (PC) at any time "to suspend or cancel the licenses of private watchman or security guard agency found violating any of the provisions of this Act or of the rules and regulations promulgated by the Chief of Constabulary pursuant thereto." With the enactment of Republic Act No. 6975 ("Department of the Interior and Local Government Act of 1990"), the PC-INP was abolished and in its place, a new police force was established, the Philippine National Police (PNP). Among the administrative support units of the PNP under the new law is the Civil Security Unit which shall provide administrative services and general supervision over the organization, business operation and activities of all organized private detectives, watchmen, security guard agencies and company guard houses. It was thus but logical for defendants-appellants, as advised by their counsel, to also communicate their grievances against their employer security guard agency with the PNP. The act of furnishing copies to seven (7) other executive offices, including that of the Office of the President, was merely to inform said offices of the fact of filing of such complaint, as is usually done by individual complainants seeking official government action to address their problems or grievances. Their pending case with the NLRC would not preclude them from seeking assistance from the PNP as said agency is the national body that exercises general supervision over all security guard agencies in the country, the defendants-appellants were of the honest belief that the violation of labor laws committed by their employer will elicit proper action from said body, providing them with a relief (cancellation of license) distinct from those reliefs sought by them from the NLRC (payment of backwages and benefits).

Certainly, defendants-appellants had good reason to believe that bringing the matter to PNP is justified as no private security agency found to be violating labor laws should remain in good standing with or [be] tolerated by the PNP. Despite the pendency of the NLRC case, such request for investigation of plaintiff-appellee could not in any way be tainted with malice and bad faith where the same was made by the very individuals who suffered from the illegal labor practices of plaintiff-appellee. Moreover, no liability could arise from defendants-appellants' act of filing of the labor case with the NLRC which plaintiff-appellee claimed to have resulted in the agency's not being able to secure contracts because of such pending labor case, defendants-appellants merely exercised a right granted to them by our labor laws.[6]

It has been held that Article 19,[7] known to contain what is commonly referred to as the principle of abuse of rights, is not a panacea for all human hurts and social grievances. The object of this article is to set certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: act with justice, give everyone his due, and observe honesty and good faith. Its antithesis is any act evincing bad faith or intent to injure.[8] Article 21 refers to acts *contra bonos mores* and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good custom, public order or public policy; and (3) is done with intent to injure. The common element under Articles 19 and 21 is that the act complained of must be intentional,[9] and attended with malice or bad faith. There is no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not this principle has been violated,

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[6] *Id.* at 42-43.

[7] Art. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[8] *Nikko Hotel Manila Garden v. Reyes,* G.R. No. 154259, February 28, 2005, 452 SCRA 532, 546-547.

[9] *Id.* at 547.

resulting in damages under Articles 20 and 21,[10] or other applicable provision of law, depends on the circumstances of each case.[11] In the case before us, as correctly pointed out by the CA, the circumstances do not warrant an award of damages. Thus, the award of ₱1,000,000.00 as moral damages is quite preposterous. We agree with the appellate court that in the action of the respondents, there was no malicious intent to injure petitioner's good name and reputation. The respondents merely wanted to call the attention of responsible government agencies in order to secure appropriate action upon an erring private security agency and obtain redress for their grievances. So, we reiterate the basic postulate that in the absence of proof that there was malice or bad faith on the part of the respondents, no damages can be awarded.

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.

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[10] Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[11] *Albenson Enterprises Corporation v. Court of Appeals,* G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25.

THIRD DIVISION

[G.R. No. 150470. August 6, 2008]

SPOUSES FELIPE and VICTORIA LAYOS, *petitioners, vs.* **FIL-ESTATE GOLF AND DEVELOPMENT, INC., LA PAZ HOUSING AND DEVELOPMENT CORPORATION, REPUBLIC OF THE PHILIPPINES, AND THE SPOUSES MARINA AND GENEROSO OTIC,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF *RES JUDICATA;* ELUCIDATED. —** *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. It is espoused in the Rules of Court, under paragraphs (b) and (c) of Section 47, Rule 39, which provide: SEC. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x x (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating the same thing and under the same title and in the same capacity; and (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment

or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

2. **ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; ELUCIDATED. —** The Resolution of this Court in *Calalang v. Register of Deeds of Quezon City,* provides the following enlightening discourse on conclusiveness of judgment: The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment. The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the

same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue. Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Another case, *Oropeza Marketing Corporation v. Allied Banking Corporation*, further differentiated between the two rules of *res judicata*, as follows: There is **"bar by prior judgment"** when, as between the first case where the judgment was rendered and the second case that is sought to be barred, **there is identity of parties, subject matter, and causes of action**. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal. But where **there is identity of parties** in the first and second cases, **but no identity of causes of action**, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This

is the concept of *res judicata* known as **"conclusiveness of judgment."** Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. In sum, conclusiveness of judgment bars the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

3. **ID.; ID.; ID.; ID.; IDENTITY OF PARTIES AND ISSUES; PRESENT IN SUBJECT CASES AT BAR. —** Contrary to the position of the Spouses Layos, there is identity of parties and issues between G.R. No. 120958 (the injunction cases) and LRC Case No. B-1784 (the reconstitution case). The principal parties in both cases are the Spouses Layos, on one hand, and La Paz and FEGDI, on the other. The Spouses Layos and La Paz both claim title to the subject property, while FEGDI is the partner of La Paz in a joint venture to develop the said property. There may be other parties named in both cases, but these parties only derive their rights from the principal parties. The Court has previously held that for purposes of *res judicata*, only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case. In other words, privity or a shared identity of interest is sufficient to invoke application of the principle of *res judicata*. It is fundamental that the application of *res judicata* may not be evaded by simply including additional parties in a subsequent litigation. For conclusiveness of judgment, identity of causes of action and subject matter is not required; it is the identity of issues that is material. The issue of the validity of the Spouses Layos' title to the subject property is integral to both G.R. No. 120958 and LRC Case No. B-1784.

4. **CIVIL LAW; LAND TITLES; RECONSTITUTION OF CERTIFICATE OF TITLE; NOT PROPER FOR SPURIOUS**

TITLES. — Reconstitution or reconstruction of a certificate of title literally and within the meaning of Republic Act No. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. For an order of reconstitution to issue, the following elements must be present: 1) the certificate of title has been lost or destroyed; 2) the petitioner is the registered owner or has an interest therein; and 3) the certificate of title is in force at the time it was lost or destroyed. Since the Court already settled in G.R. No. 120958 that OCT No. 239 is fake and a forgery, it would have been a senseless and futile endeavor for the San Pedro RTC to continue with the reconstitution proceedings in LRC Case No. B-1758, for there is actually no valid certificate to reconstitute. The court cannot, and should not, reconstitute a spurious certificate of title and allow the continuous illegal proliferation and perpetuation thereof. Republic Act No. 26 provides for a special procedure for the reconstitution of Torrens certificates of title that are missing but not **fictitious titles or titles, which are existing**.

5. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENT; EFFECT. —** Nothing is more settled in law than that when a final judgment is executory; it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. What cannot be directly done by motion for reconsideration or appeal, given the finality of the Decisions in G.R. No. 120985 and CA-G.R. CV No. 50962, likewise, cannot be indirectly done through a separate proceeding. Under the doctrine of conclusiveness of judgment which is also known as "preclusion of issues" or "collateral estoppel", issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Once a judgment attains finality it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification

is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; NOT DENIED IN CASE AT BAR. —** The Spouses Layos contend that the Order dated 19 January 1998 of the San Pedro RTC dismissing their Petition for Reconstitution without a full blown trial deprived them of their property without due process. Holding a trial in the reconstitution case would be an exercise in futility, because given the conclusiveness of the judgment of this Court in G.R. No. 120958 and the Court of Appeals in CA-G.R. CV No. 50962 that OCT No. 239 is fake, forged, and spurious, then the San Pedro RTC in LRC Case No. B-1758 is, thus, barred from re-litigating the issue and accepting evidence thereon. Furthermore, due process does not require that a trial be held in all circumstances. The Spouses Layos cannot claim deprivation of property without due process when they were never denied the opportunity to be heard by the courts. The Spouses Layos repeatedly and persistently sought recourse from the courts, at the risk of forum shopping (of which it was actually found guilty at one point in G.R. No. 120958). That the cases of the Spouses Layos were dismissed by the RTCs even before they reach trial stage is not denial of due process. The dismissals were due to the lack of merit of their complaints and/or petitions, already apparent in the pleadings and evidence on record, and pointed out in their opponents' Motions for Dismissal (in the injunction cases) and Motion for Summary Judgment (in the quieting of title case).

7. **CIVIL LAW; LAND TITLES; RECONSTITUTION OF CERTIFICATE OF TITLE; LANDS ALREADY COVERED BY VALID TITLES IN THE NAME OF REGISTERED OWNERS OTHER THAN PETITIONERS, CANNOT BE A PROPER SUBJECT OF RECONSTITUTION PROCEEDINGS. —** The RTC, acting on a petition for reconstitution, is of limited jurisdiction. Lands already covered by valid titles in the name of registered owners other than the petitioners cannot be a proper subject of reconstitution proceedings, thus: The Court stresses once more that lands

already covered by duly issued existing Torrens Titles (which become incontrovertible upon the expiration of one year from their issuance under Section 38 of the Land Registration Act) cannot be the subject of petitions for reconstitution of allegedly lost or destroyed titles filed by third parties without first securing by final judgment the cancellation of such existing titles. (And as the Court reiterated in the recent case of *Silvestre vs. Court of Appeals*, "in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his"). **The courts simply have no jurisdiction over petitions by such third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The very concept of stability and indefeasibility of titles covered under the Torrens System of registration rules out as anathema the issuance of two certificates of title over the same land to two different holders thereof.** The prayer of the Spouses Layos to have LRC Case No. B-1784 remanded to the San Pedro RTC for trial, if granted, would only be farcical. Should the San Pedro RTC subsequently grant the reconstitution of OCT No. 239 after the trial, it would only be an empty victory for the Spouses Layos, for a reconstituted certificate of title, like the original certificate, by itself does not vest ownership of the land or estate covered thereby. The valid title to the subject property would still be that of La Paz, as determined by the Court of Appeals in CA-G.R. CV No. 50962, over which the reconstituted certificate of title of the Spouses Layos cannot prevail. The reconstituted OCT No. 239 would be a mere piece of paper with actually no title to evidence ownership.

APPEARANCES OF COUNSEL

Nelson Clemente for petitioners.

Ramon Casanova for La Paz Housing Dev't. Corp.

Poblador Bautista and Reyes for Fil-Estate Golf Dev't., Inc.

Gerardo Wilfredo L. Alberto for Intervenor N. Saavedra.

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 Rules of Court filed by petitioner-spouses Felipe and Victoria Layos (Spouses Layos) seeking the reversal and setting aside of the Decision[2] dated 26 April 2001 of the Court of Appeals in CA-G.R. CV No. 61759, which affirmed the Order[3] dated 19 January 1998 of the Regional Trial Court (RTC), Branch 93 of San Pedro, Laguna, summarily dismissing the spouses Layos' Petition for Reconstitution of Original Certificate of Title (OCT) No. 239 in LRC Case No. B-1784. Likewise being assailed in the Petition at bar is the Resolution[4] dated 18 October 2001 of the appellate court denying the Spouses Layos' Motion for Reconsideration of its earlier Decision.

The factual and procedural antecedents of the case presently before this Court, by themselves, appear deceptively simple. However, they are so intimately linked with other cases the factual backgrounds and judicial resolutions of which the Court must also necessarily present herein.

I

FACTUAL BACKGROUND

G.R. No. 120958:
The Injunction Cases

The Court begins with *Fil-Estate Golf and Development, Inc. v. Court of Appeals*,[5] a case which it decided more

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[1] *Rollo*, pp. 11-31.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring; *rollo*, pp. 32-38.

[3] Penned by Judge Francisco Dizon Paro, *rollo,* pp. 41-43.

[4] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. de los Santos, concurring; *rollo*, pp. 39-40.

[5] 333 Phil. 465 (1996).

than a decade ago. The said case arose from the following facts:

Petitioner Fil-Estate Golf & Development, Inc. (FEGDI) is the developer of the Manila Southwoods golf course and residential subdivision project which partly covers lands located in Biñan, Laguna. Its partner in the joint venture, La Paz Housing and Development Corporation (La Paz), provided the aforementioned properties which are registered in its name. The project involves the "construction and development of, among others, a highway interchange linking nearby communities to the South Expressway and world class tourism-generating cultural theme and water parks."

On 29 December 1992, a certain Felipe Layos filed a complaint for Injunction and Damages with Application for Preliminary Injunction against Fil-Estate Realty Corporation, (FERC) *et al*. with the Regional Trial Court of Biñan, Laguna and docketed as Civil Case No. B-3973.

It was alleged in the said complaint that Felipe Layos is the legal owner and possessor of two (2) parcels of land having a total area of 837,695 square meters located at Barrio Tubigan, Biñan, Laguna, known as Lots 1 & 2 of Plan Psu-201 of the Bureau of Lands having acquired the same from his father, Mauricio Layos, who in turn inherited said properties from his own father, Natalio Layos, allegedly the original owner thereof. Layos claimed that the Southwoods project encroached upon the aforecited lands and thus contended that his rights of ownership and possession were violated when FERC brought in men and equipment to begin development of the said properties.

On 2 February 1993, FERC filed an Opposition to Application for Writ of Preliminary Injunction and explicitly stated therein that the developer of the Southwoods project is its sister company, FEGDI.

On 5 March 1993, FEGDI filed an Answer to the abovementioned complaint and reiterated that it is the developer of the Southwoods project and not FERC and that the land covered by the project is covered by Transfer Certificates of Title in the name of La Paz, copies of which were attached to said answer as annexes.

On 29 March 1993, Presiding Judge Justo M. Sultan of the Regional Trial Court of Biñan, Laguna issued an order denying the prayer for preliminary injunction in Civil Case No. B-3973 in view of the inability of Layos to substantiate his right. Neither he nor his counsel appeared on the scheduled hearings. x x x

x x x x x x x x x

On 25 June 1993, Felipe Layos along with his wife and other individuals filed another case for Injunction and Damages with Prayer for Preliminary Injunction with the Regional Trial Court of San Pedro, Laguna docketed as Civil Case No. B-4133, this time against the correct party, FEGDI.

The complaint in the San Pedro case (Civil Case No. B-4133) is basically identical to that filed in the Biñan case (Civil Case No. B3973), except for changes in the number of party-plaintiffs and party-defendants and in the area size of the claimed landholdings. Further, in the San Pedro case there is reference to a title (OCT No. 239), a specific date of intrusion and an increase in the damages prayed for.

On 1 July 1993, FEGDI moved to dismiss the San Pedro case on grounds of *litis pendentia*, forum-shopping, lack of cause of action and lack of jurisdiction. FEGDI argued that a similar complaint was previously filed with the Regional Trial Court of Biñan, Laguna and is currently pending therein. It, likewise, accused the private respondents of forum-shopping, stating that the latter instituted the San Pedro case after their application for preliminary injunction was denied by the Biñan court. Anent the third and fourth grounds, FEGDl averred that the documents relied upon by the private respondents are of doubtful veracity and that they failed to pay the correct filing fees considering that the San Pedro case is a real action as allegedly revealed in the body of the complaint. The Layoses filed their opposition on 5 July 1993 arguing in the main that there is no *litis pendentia* because there is no identity of parties. Felipe Layos claimed that he never authorized the filing of the Biñan case and that the defendant therein is the Fil-Estate Realty Corporation not the Fil-Estate Golf & Development, Inc. Consequently, the two cases being dissimilar, there can be no forum-shopping. Private respondents contended, likewise, that they have satisfied all the requirements of a valid cause of action and insisted that the suit is not for recovery of possession but is a personal action for injunction and damages. On 12 July 1993, Judge Stella Cabuco-Andres of the San Pedro Regional Trial Court issued an order denying FEGDI's motion to dismiss. The Motion for Reconsideration filed by FEGDI on 13 July 1993 was similarly denied by the aforesaid court in an order dated 14 July 1993.

On 15 July 1993, FEGDI filed a Petition for *Certiorari* and Prohibition with Application for Preliminary Injunction with the Court of Appeals (docketed as CA-G.R. SP No. 31507) assailing the denial of its motion to dismiss the San Pedro case. The arguments and issues raised by petitioner to support its motion to dismiss were the same issues raised in the aforestated petition.

On 20 July 1993, the Court of Appeals issued a temporary restraining order enjoining Judge Andres from proceeding with the San Pedro case.

Meanwhile, the Regional Trial Court of Biñan, Laguna, in an order dated 25 January 1994, dismissed the Biñan case without prejudice on grounds of forum-shopping. FEGDI moved for a partial reconsideration of the said order praying that the dismissal be with prejudice. Hence, on 25 April 1994, the aforestated court dismissed the Biñan case with prejudice to forestall the plaintiffs therein from forum-shopping. x x x.

x x x x x x x x x

On 10 March 1995, the Court of Appeals, dismissed FEGDI's petition for lack of merit. x x x.

FEGDI's motion for reconsideration was subsequently denied in the Court of Appeals' resolution dated 13 July 1995. Hence, this petition for review.[6]

FEGDI came to this Court via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 120958. The Court granted the Petition and ruled in favor of FEGDI.

The Court found that therein private respondents, which included the Spouses Layos, did commit forum shopping by instituting similar proceedings for injunction before the RTCs of Biñan and San Pedro, Laguna:

Private respondents have indeed resorted to forum-shopping in order to obtain a favorable decision. The familiar pattern (of one party's practice of deliberately seeking out a " sympathetic" court) is undisputedly revealed by the fact that after Felipe Layos instituted

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[6] *Id.* at 468-474.

in 1992 a case for injunction and damages with application for preliminary injunction in the Regional Trial Court of Biñan, Laguna and after his prayer for a preliminary injunction was denied in March 1993, he and his wife, together with four (4) alleged buyers of portions of the land claimed by him, filed an identical complaint for injunction and damages with preliminary injunction a few months later, or in June 1993, this time with the Regional Trial Court of San Pedro, Laguna.

Having been denied their temporary restraining order in one court, private respondents immediately instituted the same action in another tribunal — a deliberate tactic to seek out a different court which may grant their application for preliminary injunction, or at least give them another chance to obtain one.

Private respondents parry petitioner's allegation of forum shopping by adamantly contending that Felipe Layos did not, in any manner, authorize the filing of the Biñan case. Moreover, they insist that Felipe Layos' signature in the Biñan complaint is a forgery and that he neither appeared nor participated in the proceedings before the Biñan court.

We find no merit in private respondents' assertions. The almost word-for-word similarity of the complaints in both the Biñan and San Pedro cases totally refutes such a theory, as can readily be observed from a comparative view of the two aforementioned complaints x x x.

x x x x x x x x x

Even the affidavits attached to the two complaints are virtually identical x x x

x x x x x x x x x

Examining the two complaints one can easily discern that the San Pedro complaint is simply an "improved" version of the Biñan complaint and the similarity does not end there. The residence certificates (of Felipe Layos) used in the verification of both complaints are practically identical — same number, date of issue and place of issue.

If indeed there is a "ghost Mr. Layos," as claimed by the private respondents, the genuine Felipe Layos and the rest of the private respondents should have, on their own volition, denounced the

allegedly bogus case filed with the Biñan court or at the very least, informed the San Pedro court about it. It cannot be denied that private respondents were aware of the Biñan case considering that Annex C (Affidavit of Self-Adjudication with Sale) of the San Pedro complaint was a mere photocopy of Annex B of the Biñan complaint.

Private respondents likewise aver that there is no identity of party-defendants in view of the fact that the defendant in the Biñan case is the Fil-Estate Realty Corporation (FERC) and in the San Pedro case the Fil-Estate Golf and Development, Inc. (FEGDI), two completely separate and distinct entities.

Private respondents' contention is unmeritorious. In the Biñan case, FEGDI voluntarily submitted to the court's jurisdiction by filing its answer and expressly stating therein that it is the developer of Southwoods, and not its sister company, FERC. Moreover, the Biñan court in its orders dated 25 January 1994 and 20 October 1994 expressly recognized FEGDI as the defendant in the said case. There can be no question then that in both cases FEGDI is the true party-defendant.

As clearly demonstrated above, the willful attempt by private respondents to obtain a preliminary injunction in another court after it failed to acquire the same from the original court constitutes grave abuse of the judicial process. Such disrespect is penalized by the summary dismissal of both actions as mandated by paragraph 17 of the Interim Rules and Guidelines issued by this Court on 11 January 1983 and Supreme Court Circular No. 28-91. x x x

x x x x x x x x x

The rule against forum-shopping is further strengthened by the issuance of Supreme Court Administrative Circular No. 04-94. Said circular formally established the rule that the deliberate filing of multiple complaints to obtain favorable action constitutes forum-shopping and shall be a ground for summary dismissal thereof x x x.[7]

The Court further pronounced that the Complaint in the San Pedro case did not state a cause of action. Taking into consideration the Complaint itself and its attached annexes, as well as the other pleadings submitted by the parties, the Court found that:

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[7] *Id.* at 475-487.

In the San Pedro complaint, private respondents anchored their claim of ownership on an OCT No. 239 and on a survey plan Psu-201 in the name of Natalio Layos, copies of which were attached to the complaint. His son and sole heir Mauricio Layos inherited the properties covered by the said plan. In turn, Felipe Layos became the owner thereof through an Affidavit of Self-Adjudication with Sale executed by Mauricio Layos, his father. This is where the inconsistency materializes. In the said Affidavit of Self-Adjudication with Sale which was also attached to the San Pedro complaint as Annex "C", Mauricio Layos categorically stated that the subject properties (Lots No. 1 and 2 of Plan PSU-201) were not registered under the *Spanish Mortgage Law or under the Property Registration Decree*. If the properties in question were not registered, where did the OCT No. 239 come from? Mauricio Layos' express admission not only contradicts but indubitably strikes down the purported OCT No. 239 and exposes private respondents' claim as a sham. This inconsistency is patent in the documents attached to the complaint which form part and parcel of the complaint. The Affidavit of Self-Adjudication with Sale attached to the complaint is the crucial and indispensable basis for private respondents' claim of ownership and interest in the subject properties, without which they have no right of action or personality in the case. Necessarily, the Affidavit of Self-Adjudication is a vital part of the complaint that should be considered in the determination of whether or not a cause of action exists.

Private respondents' inconsistency is further manifested by the 1992 application for original registration filed by Mauricio Layos with the Regional Trial Court of Biñan, Laguna (docketed as Civil Case No. B-542) for the lots under Plan Psu-201. Why would Mauricio Layos file an application for the registration of the land claimed by him if it is already covered by OCT No. 239? The conclusion is inescapable that the document is fake or a forgery.

Finally, private respondents' cause of action against petitioner is defeated by the findings of Mr. Privadi Dalire, Chief of the Geodetic Surveys Division of the Bureau of Lands, contained in his letters to the Regional Technical Director of the Department of Environment and Natural Resources (DENR), Region IV dated 12 November 1992 and 15 December 1992, respectively:

12 November 1992

The Regional Technical Director of Lands
DENR, Region IV, 1515 L & S Building
Roxas Boulevard. Manila

ATTN.: Engr. ROBERT C. PANGYARIHAN
OIC, Surveys Division

Sir:

In connection with your request to validate the white print copy of an alleged plan Psu-201 which you had issued and certified that it is a copy of the tracing cloth of Psu-201 which is on file in that Office, please forward to us the tracing cloth plan to be examined instead of the white print copy that you have issued in accordance with the procedure stated in DENR Administrative Order regarding validation of plans other than the original copies being sent to the region office.

It may be worthwhile to state for your information that the plan Psu-201 is not among those officially enrolled into the file of this Bureau. What is more confusing is that the inventory book of all plans that were recovered after the war shows that Psu-201 is a survey for J. Reed covering a piece of land in Malate, Manila but the plan that was salvaged was heavily damaged and therefore it was not also microfilmed. This would require therefore a more exhaustive research regarding the authenticity of the tracing cloth that is in your file. (Italics ours.)

Very truly yours,

For the Director of Lands:
(SGD.) PRIVADI J.G. DALIRE
Chief, Geodetic Surveys Division

x x x x x x x x x

MEMORANDUM:

15 December 1992

FOR: The Regional Technical Director of Lands
The Chief, Regional Surveys Division
DENR, Region IV
L & S Building, Roxas Boulevard
Manila

FROM: L M B
SUBJECT: Psu-201

Records show that the region furnished us a white print copy certified by Engr. Robert Pangyarihan to have been "prepared from a tracing cloth plan on file in the NCR" for validation. We returned the white print plan prepared by Engr. Pangyarihan because we should examine the "tracing cloth plan" and it is the tracing cloth plan, white prints and photographic copies sent by the Central Records Division to be returned to LMB for validation by this Division.

In the letter dated 27 November 1992, Engr. Pangyarihan explained that he prepared the copy which he certified from a white print plan on file in the region as the applicant claims to have lost the tracing cloth. While the explanation may be considered, yet the preparation of the plan is not yet in accordance with Section 1.3 and 4.3 of DENR Administrative Order No. 49, s-1991 which requires that the white prints or photographic print of the plan other than the original plan which have been decentralized must first be authenticated by this Bureau before a certified true copy is issued by the region. It is evident therefore that the issuance of a certified true copy of Psu-201 from a white print is premature, and considered void *ab initio*.

Consider also that if the record of the Bureau is different from the print copy is subjected to field ocular inspection of the land and on the basis of the findings, the region may reconstruct the plan to be approved as usual. Certified copies may now be issued based on the reconstructed and approved plan. The white print of Psu-201 should therefore be subjected to ocular inspection.

Our records of inventory of approved plans show Psu-201 as a survey of J. Reed covering a piece of land in Malate, Manila. That plan was heavily damaged and its reconstruction was not finalized. This should be included in the investigation. (Italics ours.)

For the Director of Lands:

(SGD.) PRIVADI J.G. DALIRE
Chief, Geodetic Surveys Division.

Consequently, Mr. Sidicious F. Panoy, the Regional Technical Director of DENR, Region IV, issued an order dated 5 May 1994 cancelling all copies of plans pertaining to Psu-201. The order states that:

IN RE:	CANCELLATION ORDER:
	Plan Si-14769
True copy of Plan	Claimant-Sofronio Olano
Si- 14779 and Psu-201	Brgy Bukal ng Tala & Hasaan
	Municipality of Ternate, Cavite
	Area: 13,321,977 sq. m.
	Plan Psu-201
	Claimant - Natalio Layos
	Brgy. Tubigan, Biñan, Laguna
	Area: 837,695 sq. m.

ORDER

By way of reaction to a number of inquiries as to the status of plans Si-14769 and Psu-201, verification was made at the Technical Reference Section of the Land Management Bureau, Escolta, Manila as to the authenticity thereof on the basis of still recoverable records and the following facts were established, to wit:

1. That Psu-201 is an original survey for J Reed located in Malate, Manila; and

2. That Si-14769 is a survey number for the plan of a land parcel situated in Bo. Bessang, Municipality of Allacapang, Province of Cagayan in the name of Gregorio Blanco.

The purported blue print plan of Psu-201 indicating the land covered thereby to be situated in Bo. Tubigan, Biñan, Laguna and claimed by Natalio Layos and comprising 837,695 sq. meters is, therefore, a spurious plan and, probably the result of a manipulative act by scheming individuals who surreptitiously got it inserted in the records. The same can be said as to the blue print of Si-14769 which is a plan purportedly covering a parcel of land situated in Bo. Bukal ng Tala and Hasaan, Ternate, Cavite comprising 13,321,977 sq. meters. (Italics ours.)

WHEREFORE, in view of the foregoing, all plans pertaining to the above and indicated as true copies and bearing the signature of Engr. Robert C. Pangyarihan are as hereby IT IS CANCELLED including

any document attached thereto and, as such, declared null and void and of no force and effect.

SO ORDERED.

5 May 1994.

(SGD.) SIDICIOUS F. PANOY
Regional Technical Director

It is quite evident from the foregoing findings on record that private respondents' claim of ownership is totally baseless. Plan Psu-201 pertains to land located in Malate, Manila and said survey plan was made for a certain J. Reed.

In the case at bar, the technical rules of procedure regarding motions to dismiss must be applied liberally lest these very same rules be used not to achieve but to thwart justice.[8]

Consequently, on the grounds of forum shopping and lack of cause of action, the Court decreed in G.R. No. 120958 as follows:

WHEREFORE, premises considered, the petition for review on *certiorari* is hereby GRANTED. Private respondents' complaint docketed as Civil Case No. B-4133 is hereby DISMISSED.[9]

In a Resolution dated 19 February 1997, the Court refused to reconsider its afore-quoted Decision and dismissed with finality G.R. No. 120958.

CA-G.R. CV No. 50962:
The Quieting of Title Case

On 12 August 1993, only months after instituting the injunction cases before the RTCs of Biñan and San Pedro, Laguna, and during the pendency of said cases, the Spouses Layos filed with the Biñan RTC a Complaint[10] for Quieting of Title and/or Declaration of Nullity/Annulment of Title with Damages, against

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[8] *Id*. at 494-499.

[9] *Id*. at 499.

[10] *Rollo*, pp. 452-460.

La Paz and the Register of Deeds of the Province of Laguna, docketed as Civil Case No. B-4194.

According to the Complaint, Felipe Layos' grandfather, Natalio Layos, was the original owner and lawful possessor of two parcels of land (subject property) with a total land area of 1,068,725 square meters, more or less, situated in Barrio Tubigan, Biñan, Laguna, known as Lots 1 and 2 of Plan Psu-201 of the Bureau of Lands. The subject property is covered by OCT No. 239 in the name of Natalio Layos. Upon the death of Natalio Layos, his son, Mauricio Layos, inherited the subject property. On 15 April 1992, Mauricio Layos executed an Affidavit of Self-Adjudication with Sale by which he sold the subject property to his son, Felipe Layos, and the latter's wife, Victoria Layos. The Spouses Layos and their predecessors-in-interest had exercised their right of ownership by being in open, continuous, adverse, and peaceful possession of the subject property for more than 80 years, even before Plan Psu-201 was approved by the Bureau of Lands. The subject property had also been declared for taxation purposes with an assessed value of ₱555,737.00.

The Complaint further alleged that in 1992 and 1993, La Paz, in conspiracy with other persons, entered the subject property and started developing the same without the consent of the Spouses Layos. The Spouses Layos then discovered that La Paz had in its name 19 Transfer Certificates of Title (TCTs) which encroached upon portions of the subject property. The TCTs of La Paz were derived from OCT No. 242, which was issued on 9 August 1913, or 14 days after OCT No. 239 was issued on 30 July 1913 in the name of Natalio Layos. Since OCT No. 239 was older or issued earlier than OCT No. 242, the Spouses Layos asserted that their title under OCT No. 239 was indefeasible against any other title issued subsequent to it, such as OCT No. 242 and the TCTs of La Paz derived and issued from the latter.

Contending that the TCTs of La Paz, although void *ab initio*, put a cloud over their title to and ownership and possession of the subject property, the Spouses Layos primarily prayed that

the said TCTs be declared null and void and be accordingly cancelled in order to quiet their title.

In their Answer, La Paz and the Register of Deeds denied the allegations in the Spouses Layos' Complaint, and countered:

21. That [Spouses Layos] have never owned nor possessed the land in question.

22. That the Original Certificates of Title No. 239 purportedly issued by the Register of Deeds on November 18, 1913, in the name of Natalio Layos, does not exist in the files of the Registry of Deeds of Laguna.

23. That Decree No. 7663 dated July 12, 1912, GLRO Record No. 7733 from whence OCT No. 239 appears to have emanated from likewise does not exist in the records of the Land Registration Authority.

24. That records of Plan PSU-201 are still extant in the Bureau of Lands but it is not in the name of Natalio Layos, but in the name of another person nor, is the land covered thereby situated in Laguna.

25. That the certified technical data of Lot Nos. 1 and 2, PSU-201, marked as Annex 'D' attached to the Complaint was issued on the basis of records that do not exist in the files of the Lands Office.

26. That in the Affidavit of Self-Adjudication with Sale dated April 15, 1992, marked as Annex 'C' attached to the Complaint, there is an admission in the third paragraph by Mauricio Layos to the following effect:

'Which parcels of land are not registered under the Spanish Mortgage Law nor the Property Registration Decree.[']

27. That the [Spouses Layos'] alleged predecessor, Mauricio Layos, filed an application for registration of the same land on October 5, 1992, with this Honorable Court docketed as LRC No. RTC-B-542, which act amounts to an admission that the [Spouses Layos] and their predecessors-in-interest have no title to the land.

28. That OCT No. 239 surfaced only when the [Spouses Layos] themselves filed a petition for reconstitution of their alleged OCT No. 239 with this Honorable Court on August 11, 1993 (sic), which has been docketed as LRC Case No. B-1784.

29. That it is [La Paz's] Certificates of Titles [sic] that are real, genuine and subsisting, and the originals thereof are extant in the files of the Registry of Deeds of Laguna.

30. That [La Paz] acquired ownership of these lands from various registered owners from 1982 to 1988 for valuable consideration.

31. That the lands form part of what used to be called the Biñan Friar Land estate which the government purchased from Spanish Religious Orders, and later subdivided and resold at cost to qualified applicants pursuant to Act No. 1120, otherwise known as the Friar Land Act, and which have fallen finally into the hands of [La Paz] after a succession of transfers.

32. That under Act No. 496, otherwise known as the Land Registration Act, [La Paz's] titles to the land in question are indefeasible, binding, conclusive and enforceable against the whole world.[11]

Following other developments in the case,[12] La Paz filed on 22 February 1995 an Omnibus Amended Motion (for Summary Judgment and Cancellation of *Lis Pendens*). Acting on the said Motion, the Biñan RTC issued on 14 July 1995 an Omnibus Order in Civil Case No. B-4194, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the instant Omnibus Amended Motion for Summary Judgment filed by counsel for [La Paz] is hereby GRANTED in accordance with Rule 34 of the Revised Rules of Court. The Original Certificate of Title No. 242 issued to the Government of the Philippine Islands and the [La Paz's] nineteen (19) Transfer Certificates of Title which were respectively derives [sic] therefrom are hereby declared indefeasible for all legal intents and purposes against any other title thereby making it binding to the whole world.

Necessarily, the Motion for Leave to Intervene and the Motion for Issuance of a Writ of Preliminary Injunction, both pending before this Court, are hereby declared MOOTED.

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[11] *Id*. at 465-466.

[12] Related to the filing by the Spouses Layos of a Petition for Notice of *Lis Pendens* and the filing by unnamed parties of a Motion for Leave of Court to Intervene.

On the other hand, the Motion for Cancellation of *Lis Pendens* included in the [La Paz's] Omnibus Motion for Summary Judgment is likewise GRANTED for the reasons above-stated.

Consequently, the Office of the Register of Deeds of Calamba, Laguna is hereby directed to immediately cancel the Notice of *Lis Pendens* annotated at the back of each of the [La Paz's] nineteen (19) Transfer Certificates of Title which were all disputed by the [Spouses Layos].

Meanwhile, let the hearing of the instant case for the reception of evidence as to the counterclaim of [La Paz] for damages be set for hearing on August 31, 1995 at 8:30 o'clock in the morning.[13]

When their motion for reconsideration was denied by the Biñan RTC, the Spouses Layos appealed their case to the Court of Appeals, where it was docketed as CA-G.R. CV No. 50962. In a Decision[14] dated 20 February 2001, the appellate court ruled:

Under par. 13 of the [Spouses Layos'] complaint, it was alleged that La Paz['s] title was issued only on August 9, 1913, which was 14 days after the issuance of the Layos' title. From the findings of the lower court, August 13, 1913 was the date when La Paz['s] title was transcribed at the Register of Deeds while that of the Layos as can be seen in their attached xerox copy of title, the transcription was made later which was on November, 1913.

The date issued referred to by [Spouses Layos] is the date of the decree of judgment issued by the Court. But this is not the reckoning period within which title should become indefeasible in the ambit of the law. The operative act is the decree of registration which is the transcription at the Register of Deeds. One year after its transcription in the Register of Deeds, the title becomes indefeasible. It means therefore, that it is the transcription in the Register of Deeds and not the date decreed by the Court is the operative act. And this should be the reckoning date when a title becomes indefeasible.

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[13] *Rollo*, pp. 461-462.

[14] Penned by Associate Justice Eloy R. Bello, Jr. with Associate Justices Eugenio S. Labitoria and Perlita J. Tria Tirona, concurring; *rollo,* pp. 461-474.

In the case at bar, we have the scenario that OCT 239 was earlier decreed by the Land Management Court than OCT 242, but for unknown reasons, OCT 242 was transcribed earlier at the Register of [D]eeds on August 19, 1913 while OCT 239 was transcribed at the Register of Deeds only on November 18, 1913. While the PSU-201 is of minor importance as even claimed by [Spouses Layos], this court deem to pass over the same.

[Spouses Layos] contended that the representatives of the Land Management Bureau, identified and confirmed that the Original PSU-201 in the name of Natalio Layos and the technical descriptions as appearing in LMB Form No. 28-37R issued to [Spouses Layos], are true and genuine. But this was denied by the Chief, Records of [sic] Division of the Bureau of Lands, Mr. Armando Bangayan, the superior of the Land Management Bureau, alleging in his affidavit that was [sic] not his signature appearing in the Certification. And to corroborate the denial of Mr. Bangayan, a certain Engineer Private (sic) J.J. Dalire, Chief of Surveys Division, Land Management Bureau, PSU-201 which is purportedly covered by OCT No. 239 is a survey plan in the name of J. Reed and it covers a piece of land situated in Malate, Manila. Further, the Regional Technical Director for Lands, Region IV, Roxas Boulevard, Manila has issued an Order declaring PSU-201 of Natalio Layos as null and void, because it is a spurious document.

Considering the aforementioned, this Court believes that [Spouses Layos] has [sic] no proof to establish their claim in the present case.

With the foregoing, this court is more inclined to believe the three affidavits executed by three (3) different individuals coming from different offices that PSU-201 claimed by Layos is obviously doubtful, contrary to the affidavits of persons who are subordinates of Bangayan. If this is so, OCT 239 is therefore, patently a spurious title.[15] (Underscoring supplied.)

Based on the foregoing ratiocination, the *fallo* of the Court of Appeals Decision dated 20 February 2001 in CA-G.R. CV No. 50962 reads, thus:

[15] *Id*. at 472-473.

WHEREFORE, finding no reversible error committed on the part of the lower court, the appealed Omnibus Order dated July 14, 1995 is hereby AFFIRMED.[16]

Records do not show whether the Spouses Layos filed a motion for reconsideration of the afore-mentioned Decision of the appellate court; what they do establish is that the Spouses Layos filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 155612, but said Petition was denied by this Court in a Resolution dated 13 January 2003 because of the Spouses Layos' failure to:

a) take the appeal within the reglementary period of fifteen (15) days in accordance with Section 2, Rule 45 in relation to Section 5(a), Rule 56, in view of the denial of the motion for extension of time to file said petition in the resolution of 20 November 2002;

b) properly verify the petition in accordance with Section 4, Rule 7 in relation to Section 1, Rule 45, and submit a valid certification on non-forum shopping duly executed by all petitioners in accordance with Section 5, Rule 7, Section 4(e), Rule 45 in relation to Section 2, Rule 42 and Sections 4 and 5(d), Rule 56, there being no proof that petitioner Felipe Layos was duly authorized to sign said verification and certification on non-forum shopping in behalf of his co-petitioner; and

c) serve a copy of the petition on the Court of Appeals in accordance with Section 4, Rule 13, in relation to Section 3, Rule 45 of the 1997 Rules of Civil Procedure, as amended, and par. 2 of Revised Circular No. 1-88 of this Court.[17]

The Resolution dated 13 January 2003 of this Court denying the Petition in G.R. No. 155612 became final and executory, and entry of judgment was made therein on 14 March 2003.[18]

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[16] *Id*.

[17] *Id*. at 475-476.

[18] *Id*.

G.R. No. 150470:
The Reconstitution Case

The Court now comes to the Petition at bar.

The instant Petition originated from a Petition for Reconstitution[19] of OCT No. 239 filed by the Spouses Layos on 12 August 1993 with the San Pedro RTC, docketed as LRC Case No. B-1784. It is noted that the Spouses Layos instituted this reconstitution case on the same day as their quieting of title case before the Biñan RTC.

The Petition in LRC Case No. B-1784 essentially contained the same allegations made by the Spouses Layos in their Complaints in the injunction cases and quieting of title case. However, in support of their prayer for the reconstitution of the original copy of OCT No. 239 from their Owner's Duplicate Certificate, the Spouses Layos additionally alleged that:

> 6. The Owner's Duplicate Certificate of the said Original Certificate of Title is in due form without any alteration or erasure, and is not subject to litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance.
>
> x x x x x x x x x
>
> 9. The Original Copy of the said title which used to be in the Office of the Register of Deeds for the Province of Laguna appears to have been lost and/or destroyed. In fact, the said Office does not anymore have any record regarding the subject title.
>
> 10. The above parcels of land are free from any lien or encumbrance, and no deed or instrument affecting the same has been presented for registration or is any such deed or instrument pending registration with the Office of the Register of Deeds for the Province of Laguna.
>
> 11. The above parcels of land are in lawful possession of [Spouses Layos].
>
> 12. The transfer of the subject properties from Natalio Layos to Mauricio Layos (by inheritance) and the subsequent transfer of

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[19] *Id*. at 477-482.

the same properties from Mauricio Layos to petitioner Felipe Layos (through the Affidavit of Self-Adjudication with Sale executed by Mauricio Layos in favor of Felipe Layos) cannot be registered and new title/s cannot be issued in the name of [Spouses Layos] because the original copy of said Original Certificate of Title No. 239 was lost and/or destroyed.[20]

Several parties filed their intervention and/or opposition to the Petition for Reconstitution of the Spouses Layos in LRC Case No. B-1784, particularly:

PARTY	PLEADING	INTEREST/BASIS
Shappel Homes, Inc.	Complaint-in-Intervention[21]	In a Joint Venture with the Spouses Layos to develop the subject property
La Paz	Opposition[22]	Existing TCTs over the subject property
FEGDI	Opposition[23]	In a Joint Venture with La Paz to develop the subject property as part of the Manila Southwoods Project
Mauricio Layos	Opposition[24]	Sole child and heir of Natalio Layos denies alienating or disposing the subject property in favor of the Spouses Layos

[20] *Id*. at 479-480.

[21] Records, Vol. 1, pp. 84-86.

[22] *Id*. at 173-184.

[23] *Id*. at 195-204.

[24] *Id*. at 264-270.

Spouses Antonio and Norma Saavedra	Complaint-in-Intervention[25]	Purchased portions of the subject property from Mauricio Layos and Felipe Layos
Veneracion L. Arboleda, Antonio L. Arboleda, Jr., Lydia Arboleda-David, and Antonio M. Arboleda	Complaint-in-Intervention[26]	Purchased portions of the subject property from Mauricio Layos and/ or Felipe Layos
Spouses Ponciano and Annie Miranda	Petition-in-Intervention[27]	Purchased a portion of the subject property from the Spouses Layos
Bonifacio Javier, representing the Heirs of Natalio Layos	Opposition[28]	The true heirs of Natalio Layos deny that the Spouses Layos are in any way related to them
Spouses Marina and Generoso Otic	Motion for Intervention[29]	Purchased an undivided portion of the subject property from Mauricio Layos and are, thus, co-owners of the subject property with Mauricio Layos

FEGDI and La Paz filed separate Motions to Dismiss, which the Office of the Solicitor General supported in its Comment

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[25] *Id.*, Vol. II, pp. 407-409.

[26] *Id.* at 428-431.

[27] *Id.* at 529-532.

[28] *Id.*, Vol. III, pp. 797-798.

[29] *Id.* at 827-829.

on the Petition. On 19 January 1998, the San Pedro RTC issued an Order,[30] the dispositive portion of which states:

> Acting therefore on the motion (sic) to dismiss filed by La Paz Housing and FEGDI, and it appearing that indeed the title sought to be reconstituted, specifically OCT No. 239 is a forgery as held no [sic] less than the Supreme Court in G.R. No. 120958, *Fil-Estate Golf and Development, Inc., (FEGDI) vs. Court of Appeals*, December 16, 1996, the Court has no other option but to dismiss the case.
>
> Resolution on all other pending incidents had been rendered moot and academic with the dismissal of this case.[31]

The San Pedro RTC denied the Spouses Layos' Motion for Reconsideration in an Order[32] issued on 1 October 1998.

Aggrieved, the Spouses Layos filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 61759. The appellate court, however, found no reversible error in the ruling of the lower court dismissing the Spouses Layos' Petition for Reconstitution. According to the Court of Appeals, the validity of OCT No. 239 of the spouses Layos was already determined by the Supreme Court in its Decision dated 16 December 1996 in G.R. No. 120958, in which the Supreme Court categorically declared that the said certificate of title was a forgery. The appellate court contradicted the Spouses Layos' assertion that such declaration of the Supreme Court in G.R. No. 120958 was merely an *obiter dictum*, for the same was a resolution of one of the controverted issues and was part of the principal disquisition of the lower court. Hence, in its assailed Decision[33] dated 26 April 2001, the Court of Appeals decreed:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED, and the orders of the lower court dated January 19, 1998 and October 1, 1998 are hereby AFFIRMED.[34]

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[30] *Rollo,* pp. 41-43.

[31] *Id*. at 43.

[32] *Id*. at 44.

[33] *Id*. at 32-38.

[34] *Id*. at 38.

The Spouses Layos moved for the reconsideration of the foregoing Decision, but they failed to convince the Court of Appeals to detract from its earlier ruling. Resultantly, the appellate court denied what it called the "pro-forma motion for reconsideration" of the Spouses Layos in a Resolution[35] dated 18 October 2001.

The Spouses Layos, thus, filed before this Court the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 150470, stating the following assignment of errors:

A. The Court of Appeals erred in applying the principle of *res judicata* in the instant case, when it declared that the ruling of this Honorable Supreme Court in G.R. No. 120958 is conclusive upon the issue of validity of the [Spouses Layos'] O.C.T. No. 239;

B. The Court of Appeals erred in holding that the observation of this Honorable Supreme Court in G.R. No. 120958 to the effect that OCT No. 239 is a forgery was not merely an *obiter dictum*, but a resolution of one of the controverted issues, and is part of the principal disquisition of the Supreme Court;

C. The Court of Appeals erred in upholding the summary dismissal of the instant case by the court *a quo* by holding that since the title sought to be reconstituted has finally been determined as a forgery and fake, there is no longer a need for trial and in effect deprived [Spouses Layos] of property without due process of law; [and]

D. The Court of Appeals erred in upholding the decision of the lower court and in effect violated the cardinal rule against a collateral attack against the validity of the land title;[36]

and seeking the following reliefs from this Court:

WHEREFORE, it is respectfully prayed that judgment be rendered by this Honorable Court, setting aside the assailed Decision dated

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

[36] *Id*. at 16.

April 26, 2001 and Resolution dated October 18, 2001 respectively of the Court of Appeals which affirmed the Decision of the Court *a quo* for being contrary to law and jurisprudence and directing the Regional Trial Court of San Pedro, Laguna to forthwith receive evidence of all parties concerned to determine the merits of their respective claims.

Other reliefs just and equitable are likewise prayed for.

II

THE COURT'S RULING

Res Judicata

Based on the arguments raised by the parties in their pleadings herein, the foremost issue for resolution of this Court is whether the Decision dated 16 December 1996 of this Court in G.R. No. 120958 bars by *res judicata* LRC Case No. B-1784, the Petition for Reconstitution of OCT No. 239 filed by the Spouses Layos before the San Pedro RTC, thus, justifying the dismissal of the latter case.

The Spouses Layos maintain that the Decision dated 16 December 1996 of this Court in G.R. No. 120958 does not bar by *res judicata* their Petition for Reconstitution of the same certificate of title in LRC Case No. B-1784, there being no identity of parties, causes of action, and subject matters between the two cases. They insist that the Court in G.R. No. 120958 had no jurisdiction to determine the issue of ownership as the same was never raised or contained in the pleadings and, therefore, any pronouncement of the Court in its Decision of 16 December 1996 on the validity of OCT No. 239 or on the question of ownership is mere *obiter dictum*. They highlight the fact that the *fallo* of the Court's 16 December 1996 Decision in G.R. No. 120958 simply dismissed the injunction case before the San Pedro RTC but did not annul or cancel OCT No. 239.

The position of the Spouses Layos is untenable.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by

judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[37]

It is espoused in the Rules of Court, under paragraphs (b) and (c) of Section 47, Rule 39, which provide:

SEC. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is

[37] *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 563 (2002).

conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence.[38] In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

The Resolution of this Court in *Calalang v. Register of Deeds of Quezon City,*[39] provides the following enlightening discourse on conclusiveness of judgment:

> The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.
>
> The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus*

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[38] *Vda. de Cruzo v. Carriaga, Jr.,* G.R. No. 75109-10, 28 June 1989, 174 SCRA 330, 338.

[39] G.R. No. 76265, 11 March 1994, 231 SCRA 88, 99-100.

vs. Court of Appeals, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.

Another case, *Oropeza Marketing Corporation v. Allied Banking Corporation*,[40] further differentiated between the two rules of *res judicata*, as follows:

There is **"bar by prior judgment"** when, as between the first case where the judgment was rendered and the second case that is sought to be barred, **there is identity of parties, subject matter, and causes of action**. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

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[40] 441 Phil. 551, 564 (2002).

But where **there is identity of parties** in the first and second cases, **but no identity of causes of action**, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as **"conclusiveness of judgment."** Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. (Emphasis ours.)

In sum, conclusiveness of judgment bars the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

It is on the ground of *res judicata*, in its second concept — conclusiveness of judgment — that the Petition for Reconstitution of the Spouses Layos must be dismissed. As explained by the Court of Appeals in its assailed Decision:

In the case at bar, the ruling of the Supreme Court in G.R. No. 120958 is conclusive upon the issue of validity of the [Spouses Layos'] OCT No. 239, inasmuch as the said issue has already been mutually controverted by the parties and ruled upon with finality by the Supreme Court no less, in favor of the invalidity of the [Spouses Layos'] title.[41]

Conclusiveness of Judgment in G.R. No. 120958

Contrary to the position of the Spouses Layos, there is identity of parties and issues between G.R. No. 120958 (the injunction cases) and LRC Case No. B-1784 (the reconstitution case).

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[41] *Rollo,* p. 35.

The principal parties in both cases are the Spouses Layos, on one hand, and La Paz and FEGDI, on the other. The Spouses Layos and La Paz both claim title to the subject property, while FEGDI is the partner of La Paz in a joint venture to develop the said property. There may be other parties named in both cases, but these parties only derive their rights from the principal parties. The Court has previously held that for purposes of *res judicata*, only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case. In other words, privity or a shared identity of interest is sufficient to invoke application of the principle of *res judicata*.[42] It is fundamental that the application of *res judicata* may not be evaded by simply including additional parties in a subsequent litigation.[43]

For conclusiveness of judgment, identity of causes of action and subject matter is not required; it is the identity of issues that is material. The issue of the validity of the Spouses Layos' title to the subject property is integral to both G.R. No. 120958 and LRC Case No. B-1784.

In G.R. No. 120958, the Spouses Layos themselves invoked OCT No. 239 to establish their title over the subject property. It was on the basis of their title to the subject property that they sought to enjoin FEGDI and La Paz from entering into and developing the same. In seeking the dismissal of the injunction case before the San Pedro RTC, La Paz presented its own title to the subject property by virtue of which it claimed the right to possess and develop the said property. It then became incumbent upon the Court to determine which of the titles to the property is valid. For the Spouses Layos to be entitled to the issuance of a writ of injunction, it must have valid title to the subject property. Without a valid title to the said property,

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[42] *Sendon v. Ruiz*, 415 Phil. 376, 385 (2001).

[43] *Javier v. Veridiano, II*, G.R. No. 48050, 10 October 1994, 237 SCRA 565, 571.

the Spouses Layos had no cause of action for injunction against FEGDI and La Paz. It was in this context that the Court was compelled to look into the validity of the Spouses Layos' title to the subject property.

After consideration of the Complaint for injunction of the Spouses Layos and its annexed documents, the Court observed that: (a) the annexed Affidavit of Self-Adjudication with Sale, supposedly executed by Mauricio Layos in favor of his son Felipe Layos stated that the subject property had not been registered; (b) Mauricio Layos filed an application for registration of the subject property with the Biñan RTC in 1992; (c) Mr. Privadi Dalire, Chief of the Geodetic Surveys Division of the Bureau of Lands, stated his findings in his letters dated 12 November 1992 and 15 December 1992, that Plan PSU-201, on which OCT No. 239 was supposed to be based, was actually a survey for J. Reed covering a piece of land in Malate, Manila, that was heavily damaged and had not yet been fully reconstructed and microfilmed; and (d) Mr. Sidicious F. Panoy, the Regional Director of the Department of Environment and Natural Resources (DENR), Region IV, issued an Order dated 5 May 1994, cancelling all plans pertaining to PSU-201, since it was "a spurious plan and, probably the result of a manipulative act by scheming individuals who surreptitiously got it inserted in the records,"[44] which led the Court to the "inescapable" conclusion in its Decision dated 16 December 1996 that OCT No. 239 is fake or a forgery.

Consequently, the Court of Appeals correctly ruled that the pronouncement of the Supreme Court in G.R. No. 120958 on the invalidity of OCT No. 239 was not merely *obiter dictum*,[45] but was a resolution of one of the controverted issues in said case. In fact, it was on the basis of the said pronouncement

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[44] *Supra* note 5.

[45] *Obiter dictum* simply means "words of a prior opinion entirely unnecessary for the decision of the case" ("Black's *Law Dictionary*," p. 1222, citing *Noel v. Olds*, 78 U.S. App. D.C. 155) or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding ("Webster's *Third New International Dictionary*," p. 1555). (*Sta. Lucia Realty v. Cabrigas*, 411 Phil. 369, 382-383 [2001].)

that this Court ordered the dismissal of the injunction case filed before the San Pedro RTC for lack of cause of action.

In LRC Case No. B-1784, the Spouses Layos once again invoked ownership of the subject property pursuant to OCT No. 239. They sought the reconstitution of the original copy of OCT No. 239 which allegedly used to be in the possession of the Register of Deeds of Laguna, but was now lost and/or destroyed, and, in support thereof, they presented their owner's duplicate of OCT No. 239. However, both La Paz and FEGDI, as well as the Office of the Solicitor General, opposed the Petition for Reconstitution of the Spouses Layos on the ground that OCT No. 239 and Plan Psu-201, on which said certificate of title was based, were spurious. The opposition to LRC Case No. B-1784, thus, raised the question of whether a valid OCT No. 239 existed in the first place, and could be reconstituted.

Reconstitution or reconstruction of a certificate of title literally and within the meaning of Republic Act No. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition.[46] For an order of reconstitution to issue, the following elements must be present: 1) the certificate of title has been lost or destroyed; 2) the petitioner is the registered owner or has an interest therein; and 3) the certificate of title is in force at the time it was lost or destroyed.[47]

While G.R. No. 120958 does not bar the institution of LRC Case No. B-1758, the pronouncement of invalidity of OCT No. 239 by this Court in G.R. No. 120958 is conclusive upon the San Pedro RTC in LRC Case No. B-1758, precluding it from re-litigating the same issue and ending up with a contrary ruling. Since the Court already settled in G.R. No. 120958 that OCT No. 239 is fake and a forgery, it would have been a senseless and futile endeavor for the San Pedro RTC to continue with the reconstitution proceedings in LRC Case No. B-1758, for there is actually no valid certificate to reconstitute. The court

[46] *Vda. de Anciano v. Caballes*, 93 Phil. 875, 876 (1953).

[47] Antonio H. Noblejas and Edilberto H. Noblejas, *Registration of Land Titles and Deeds*, 1992 Revised Edition, p. 242.

cannot, and should not, reconstitute a spurious certificate of title and allow the continuous illegal proliferation and perpetuation thereof. Republic Act No. 26[48] provides for a special procedure for the reconstitution of Torrens certificates of title that are missing but **not fictitious titles or titles, which are existing**.[49]

Resultantly, the San Pedro RTC is left with no other option but to order the dismissal of LRC Case No. B-1758.

Conclusiveness of Judgment in G.R. No. 155612

During the pendency of the Petition at bar, a significant development took place in the quieting of title case. The Court had already denied in a Resolution dated 13 January 2003 the appeal of the Spouses Layos in G.R. No. 155612 and, in effect, affirmed the Decision dated 20 February 2001 of the Court of Appeals in CA-G.R. CV No. 50962. It should be recalled that in said Decision, the appellate court upheld the validity of OCT No. 242 from which La Paz derived its TCTs and, at the same time, explicitly found OCT No. 239 of the Spouses Layos spurious.

This ruling of the Court of Appeals on the spuriousness of OCT No. 239, once again, constitutes *res judicata* by conclusiveness of judgment on the Petition for Reconstitution of the Spouses Layos.

The Spouses Layos and La Paz, asserting their respective titles to and ownership of the subject property, are parties to the quieting of title case, as well as the reconstitution case. In their Complaint before the Biñan RTC, the Spouses Layos prayed for the quieting of their title to the subject property under OCT No. 239 by the annulment or cancellation of the TCTs of La Paz covering the same property. In answer, La Paz claimed that it was its title to the subject property under the 19 TCTs,

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[48] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed.

[49] *Cañero v. University of the Philippines*, G.R. No. 156380, 8 September 2004, 437 SCRA 630, 641.

derived from OCT No. 242, which was valid, and pointed out that it was actually OCT No. 239 and its supporting documents which were inexistent in the records of the concerned government agencies. Given the contradicting assertions of the parties, the Biñan RTC and the Court of Appeals, in their original and appellate jurisdiction, respectively, over the quieting of title case, had to delve into the issue of validity of OCT No. 239 *vis-à-vis* OCT No. 242. Necessarily, only one of the said certificates of title over the same property can be valid, and the 20 February 2001 Decision of the Court of Appeals in CA-G.R. CV No. 50962 settled with finality that it is OCT No. 242. The categorical finding of the Court of Appeals in CA-G.R. CV No. 50962 (the quieting of title case) — that OCT No. 239 is spurious — is now conclusive and binding upon this Court in its consideration on appeal of the Spouses Layos' Petition for Reconstitution of OCT No. 239, in much the same way and for the same reasons previously discussed herein for the conclusiveness of this Court's judgment in G.R. No. 120958 (the injunction cases) that OCT No. 239 is fake and a forgery.

Finality of Judgment

A statement in the Spouses Layos' Petition for Review before this Court reveals their ultimate intent:

> The test of a man's honor is his ability to admit his mistake. In the instant case, it would [be] in keeping with the rule of law and justice for this Most Venerable and Honorable Court to allow the parties to fully ventilate their claims in the court below instead of depriving the [Spouses Layos] of their valued property based on a sweeping *obiter dictum* by this Court in the FEDGI [sic] case where the [Spouses Layos'] title was not directly attacked.[50]

It may be nicely and even deceptively phrased but, simply, what the Spouses Layos pray to this Court is for the re-litigation of an issue settled conclusively in this Court's Decision dated 16 December 1996 in G.R. No. 120958, and also in the Court of Appeals' Decision dated 20 February 2001 in CA-G.R. CV

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[50] *Rollo*, p. 20.

No. 50962. Both Decisions have already become final, and no part thereof may be disturbed by any court, even if to correct a purported error therein.

Nothing is more settled in law than that when a final judgment is executory; it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[51]

What cannot be directly done by motion for reconsideration or appeal, given the finality of the Decisions in G.R. No. 120985 and CA-G.R. CV No. 50962, likewise, cannot be indirectly done through a separate proceeding.

Under the doctrine of conclusiveness of judgment which is also known as "preclusion of issues" or "collateral estoppel," issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Once a judgment attains finality it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[52]

Due Process

The Spouses Layos contend that the Order dated 19 January 1998 of the San Pedro RTC dismissing their Petition for

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[51] *Mayon Estate Corporation v. Altura*, G.R. No. 134462, 18 October 2004, 440 SCRA 377, 386.

[52] *Lu Do Lu Ym Corporation v. Aznar Brothers Realty, Co.*, G.R. No. 143307, 26 April 2006, 488 SCRA 315, 323-324.

Reconstitution without a full blown trial deprived them of their property without due process. The said Order had no evidentiary foundation, being based entirely on the unjust and sweeping conclusion of this Court in its 16 December 1996 Decision in G.R. No. 120958 that OCT No. 239 is fake or a forgery.

There is no truth in the averments of the Spouses Layos.

Holding a trial in the reconstitution case would be an exercise in futility, because given the conclusiveness of the judgment of this Court in G.R. No. 120958 and the Court of Appeals in CA-G.R. CV No. 50962 that OCT No. 239 is fake, forged, and spurious, then the San Pedro RTC in LRC Case No. B-1758 is, thus, barred from re-litigating the issue and accepting evidence thereon.

Furthermore, due process does not require that a trial be held in all circumstances. This Court, in a Resolution dated 18 November 2003 in *Republic v. Sandiganbayan*, elucidated that:

> The words "hearing" and "trial" have different meanings and connotations. Trial may refer to the reception of evidence and other processes. It embraces the period for the introduction of evidence by both parties. Hearing, as known in law, is not confined to trial but embraces the several stages of litigation, including the pre-trial stage. A hearing does not necessarily mean presentation of evidence. It does not necessarily imply the presentation of oral or documentary evidence in open court but that the parties are afforded the opportunity to be heard.
>
> A careful analysis of Section 5 of RA 1379 readily discloses that the word "hearing" does not always require the formal introduction of evidence in a trial, only that the parties are given the occasion to participate and explain how they acquired the property in question. If they are unable to show to the satisfaction of the court that they lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State. There is no provision in the law that a full blown trial ought to be conducted before the court declares the forfeiture of the subject property. Thus, even if the forfeiture proceedings do not reach trial, the court is not precluded from determining the nature of the acquisition of the property in question even in a summary proceeding.

Due process, a constitutional precept, does not therefore always and in all situations require a trial-type proceeding. The essence of due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. What the law prohibits is not merely the absence of previous notice but the absence thereof and the lack of opportunity to be heard. This opportunity was made completely available to respondents who participated in all stages of the litigation.[53]

The Spouses Layos cannot claim deprivation of property without due process when they were never denied the opportunity to be heard by the courts. The Spouses Layos repeatedly and persistently sought recourse from the courts, at the risk of forum shopping (of which it was actually found guilty at one point in G.R. No. 120958). They instituted no less than four cases before the RTCs of Biñan and San Pedro, Laguna; although based on different causes of action, all invoked their title to the subject property under OCT No. 239. They were able to file pleadings bearing their allegations and arguments, reply to their opponents' pleadings, and present as attachments their documentary evidence. When their cases were dismissed by the RTCs, they were able to file their motions for reconsideration and, upon denial thereof, raised their case on appeal to the appellate court. Unfortunately for the Spouses Layos, however, the Court of Appeals and this Court agreed in the dismissal of their cases.

That the cases of the Spouses Layos were dismissed by the RTCs even before they reach trial stage is not denial of due process. The dismissals were due to the lack of merit of their complaints and/or petitions, already apparent in the pleadings and evidence on record, and pointed out in their opponents' Motions for Dismissal (in the injunction cases) and Motion for Summary Judgment (in the quieting of title case).

In a letter dated 8 September 2005 to then Chief Justice Hilario G. Davide,[54] made part of the records of this case, Felipe

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[53] 461 Phil. 598, 613-614 (2003).

[54] *Rollo*, pp. 400-414.

Layos averred that the conflicting allegations and documents which led this Court and the Court of Appeals in G.R. No. 120958 and CA-G.R. CV No. 50962, respectively, to declare OCT No. 239 spurious, were fraudulently prepared and submitted to the courts in a concerted scheme (which sadly seemed to involve their former counsel, Atty. Vitaliano Aguirre II) to deprive them of the subject property. Now represented by a new counsel, he requested that he be given a chance to prove that the subject property is covered by OCT No. 239 and not OCT No. 242.

Even if it is conceded that the allegations of the aforementioned letter are true, no stretch of interpretation or liberal application of the rules of procedure can grant the San Pedro RTC jurisdiction in LRC Case No. B-1758, a case for reconstitution, to set aside or reverse the final judgment made in both G.R. No. 120958 and CA-G.R. CV No. 50962 on the invalidity of OCT No. 239.

The RTC, acting on a petition for reconstitution, is of limited jurisdiction. Lands already covered by valid titles in the name of registered owners other than the petitioners cannot be a proper subject of reconstitution proceedings, thus:

> The Court stresses once more that lands already covered by duly issued existing Torrens Titles (which become incontrovertible upon the expiration of one year from their issuance under Section 38 of the Land Registration Act) cannot be the subject of petitions for reconstitution of allegedly lost or destroyed titles filed by third parties without first securing by final judgment the cancellation of such existing titles. (And as the Court reiterated in the recent case of *Silvestre vs. Court of Appeals*, "in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.") **The courts simply have no jurisdiction over petitions by such third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The very concept of stability and indefeasibility of titles covered under the Torrens System of registration rules out as anathema the issuance of**

two certificates of title over the same land to two different holders thereof.[55] (Emphasis ours.)

It should be pointed out that the validity of the title to the subject property herein had already been squarely put in issue in Civil Case No. B-4194, the quieting of title case, instituted by the Spouses Layos before the Biñan RTC, and resolved definitively and with finality when appealed to the Court of Appeals in CA-G.R. CV No. 50962, in favor of La Paz. It is a ruling irrefragably beyond the jurisdiction of the San Pedro RTC to overturn or contradict in LRC Case No. B-1784, the reconstitution case.

The prayer of the Spouses Layos to have LRC Case No. B-1784 remanded to the San Pedro RTC for trial, if granted, would only be farcical. Should the San Pedro RTC subsequently grant the reconstitution of OCT No. 239 after the trial, it would only be an empty victory for the Spouses Layos, for a reconstituted certificate of title, like the original certificate, by itself does not vest ownership of the land or estate covered thereby.[56] The valid title to the subject property would still be that of La Paz, as determined by the Court of Appeals in CA-G.R. CV No. 50962, over which the reconstituted certificate of title of the Spouses Layos cannot prevail. The reconstituted OCT No. 239 would be a mere piece of paper with actually no title to evidence ownership.

As earlier mentioned, a reconstitution of title is the re-issuance of a new certificate of title lost or destroyed in its original form and condition. It does not pass upon the ownership of the land covered by the lost or destroyed title. Any change in the ownership of the property must be the subject of a separate suit. Thus, although

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[55] *Director of Lands v. Court of Appeals*, 181 Phil. 432, 439 (1979). Reiterated in *Alabang Development Corporation v. Valenzuela*, 201 Phil. 727, 744 (1982); *Metropolitan Waterworks and Sewerage System v. Sison*, 209 Phil. 325, 337 (1983); *Serra Serra v. Court of Appeals*, G.R. No. 34080, 22 March 1991, 195 SCRA 482, 494; and *Ortigas & Co., Ltd. Partnership v. Judge Velasco*, 343 Phil. 115, 136 (1997).

[56] *Alonso v. Cebu Country Club, Inc.*, 462 Phil. 546, 565 (2003).

petitioners are in possession of the land, a separate proceeding is necessary to thresh out the issue of ownership of the land.[57]

The reconstitution of a title is simply the reissuance of a new duplicate certificate of title allegedly lost or destroyed in its original form and condition. It does not pass upon the ownership of the land covered by the lost or destroyed title. Possession of a lost certificate is not necessarily equivalent to ownership of the land covered by it. The certificate of title, by itself, does not vest ownership; it is merely an evidence of title over a particular property.[58]

Evidently, the Spouses Layos seek more than just reconstitution of OCT No. 239 in LRC Case No. B-1758. They want to hold a trial so as to prove before the San Pedro RTC the fraudulent scheme perpetrated by several people, including their former counsel, to sabotage their cases before the courts; the errors in the Decisions of the courts that have long attained finality; and, ultimately, the validity of their title to the subject property. Again, these are matters beyond the jurisdiction of the San Pedro RTC to determine in a case for reconstitution. If truly the Spouses Layos have been misled and defrauded in a concerted effort to ruin their chances before the courts, then their recourse is not to persist with this petition for reconstitution of title, but to institute other actions to hold those responsible administratively, civilly, and even criminally liable.

Collateral Attack

Finally, the Spouses Layos argue that the Motions to Dismiss of La Paz and FEGDI and the Comment of the Office of the Solicitor General supporting the dismissal of the Spouses Layos' Petition for Reconstitution constitute a collateral attack upon the validity of OCT No. 239, in violation of the proscription laid down by law and jurisprudence against any collateral attack of a duly registered certificate of title.

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[57] *Lee v. Republic*, 418 Phil. 793, 803 (2001). See also *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 86-87 (2002); *Heirs of de Guzman Tuazon v. Court of Appeals*, 465 Phil. 114, 126 (2004).

[58] *Strait Times, Inc. v. Court of Appeals*, 356 Phil. 217, 230 (1998).

The Spouses Layos are clearly mistaken. No collateral attack on OCT No. 239 was made in LRC Case No. B-1784 (the reconstitution case). The San Pedro RTC dismissed it precisely because the invalidity of said certificate of title was already determined conclusively and with finality by the Supreme Court in G.R. No. 120958 (the injunction cases). A similar ruling of invalidity of OCT No. 239 was rendered yet again in the final judgment of the Court of Appeals in CA-G.R. CV No. 50962 (the quieting of title case). Therefore, no collateral attack has been made on OCT No. 239 in the present Petition; the San Pedro RTC, Court of Appeals, and this Court only abided by the conclusive and final judgment made on the invalidity of OCT No. 239 in G.R. No. 120958 and CA-G.R. CV No. 50962.

In sum, the Decision dated 16 December 1996 of this Court in G.R. No. 120958 and the Decision dated 20 February 2001 of the Court of Appeals in CA-G.R. CV No. 50962 declaring OCT No. 239 fake, forged, and spurious, already bar the reconstitution of OCT No. 239 under the doctrine of *res judicata*, in the concept of conclusiveness of judgment. There is, therefore, no need to remand the case to the San Pedro RTC for trial.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. The Decision dated 26 April 2001 and Resolution dated 18 October 2001 of the Court of Appeals in CA-G.R. CV No. 61759, affirming the Order dated 19 January 1998 of the Regional Trial Court, Branch 93 of San Pedro, Laguna, in LRC Case No. B-1784, which dismissed the Petition for Reconstitution of OCT No. 239 filed by the petitioner- spouses Felipe and Victoria Layos, are hereby *AFFIRMED*. Costs against the petitioner-spouses.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 151016. August 6, 2008]

SPOUSES SOFRONIO SANTOS and NATIVIDAD SANTOS, FROILAN SANTOS, CECILIA M. MACASPAC, and R TRANSPORT CORPORATION, *petitioners, vs.* **HEIRS OF DOMINGA LUSTRE, namely TARCISIO MANIQUIZ, TERESITA BURGOS, FLORITA M. REYES, and LERMIE MANIQUIZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN IT EXISTS. —** Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other. Among its elements are identity of the parties, identity of the subject matter and identity of the causes of action in the two cases.

2. **ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; WHEN PRESENT. —** The dispute in this case centers on whether there exist identity of causes of action and identity of parties between Civil Case No. 1330 and Civil Case No. 2115. Concededly, the causes of action in Civil Case No. 1330 and Civil Case No. 2115 are identical. There is identity of causes of action if the same evidence needed in the first case will sustain the second action, and this principle applies even if the reliefs sought in the two cases are different. Without a doubt, the same evidence will be necessary to sustain the causes of action in these two cases which are substantially based on the same series of transactions. In fact, similar reliefs are prayed for in the two cases. Both complaints ultimately seek the cancellation of the title of the alleged transferees and the recovery of the subject property.

3. **ID.; ID.; ID.; IDENTITY OF PARTIES; WHEN PRESENT. —** What is required is only substantial, not absolute, identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. Moreover, the fact that the positions of the parties are reversed, *i.e.,* the plaintiffs in the first case are the

defendants in the second case, or vice versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia.*

4. **ID.; ID.; ID.; ID.; WHEN CO-OWNERS FILE SEPARATE CASES IN DIFFERENT CAPACITIES. —** However, the fact of being a co-owner does not necessarily mean that a plaintiff is acting for the benefit of the co-ownership when he files an action respecting the co-owned property. Co-owners are not parties *inter se* in relation to the property owned in common. The test is whether the "additional" party, the co-owner in this case, acts in the same capacity or is in privity with the parties in the former action.

5. **ID.; ID.; ID.; ID.; WHETHER ADDITIONAL PARTIES ARE INDISPENSABLE PARTIES, NOT MATERIAL TO THE REQUIREMENT. —** The determination of whether there is identity of parties rests on the commonality of the parties' interest, regardless of whether they are indispensable parties or not. The issue of whether the additional parties are indispensable parties or not acquires real significance only when considering the validity of the judgment that will be rendered in the earlier case. This is so, because if the additional parties are indispensable parties, then no valid judgment can be rendered against them in the earlier case in which they did not participate, and this will foreclose the application of *res judicata* which requires the existence of a final judgment.

6. **ID.; ID.; PARTIES; INDISPENSABLE PARTIES; NECESSITY OF THEIR INCLUSION IN CASES RELATIVE TO CO-OWNERSHIP; CASE AT BAR. —** Without question, a co-owner may bring an action to recover the co-owned property without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. In such case, the other heirs are merely necessary parties. Parenthetically, the inclusion among the defendants of Cecilia Macaspac, who refused to join the other heirs as plaintiffs in Civil Case No. 2115, was not actually necessary. However, if the action is for the benefit of the plaintiff alone, as in Civil Case No. 1330, the action will not prosper unless he impleads the other co-owners who are indispensable parties. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but

even as to those present. The trial court does not acquire jurisdiction over the indispensable parties who are not impleaded in the case, and judgment thereon cannot be valid and binding against them. A decision that is null and void for want of jurisdiction on the part of the trial court is not a decision in contemplation of law; hence, it can never become final and executory. Worth mentioning is the doctrine that any adverse ruling in the earlier case will not, in any way, prejudice the heirs who did not join, even if such case was actually filed in behalf of all the co-owners. In fact, if an action for recovery of property is dismissed, a subsequent action by a co-heir who did not join the earlier case should not be barred by prior judgment. Any judgment of the court in favor of the co-owner will benefit the others, but if the judgment is adverse, the same cannot prejudice the rights of the unimpleaded co-owners

7. **CIVIL LAW; PRESCRIPTION AND LACHES; NOT APPLICABLE IN AN ACTION FOR RECONVEYANCE IN THE NATURE OF AN ACTION FOR NULLITY. —** The action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe. Moreover, a person acquiring property through fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance based on an implied trust prescribes in ten years. And in such case, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. Otherwise, if plaintiff is in possession of the property, prescription does not commence to run against him. Thus, when an action for reconveyance is nonetheless filed, it would be in the nature of a suit for quieting of title, an action that is imprescriptible. It follows then that the respondents' present action should not be barred by laches. Laches is a doctrine in equity, which may be used only in the absence of, and never against, statutory law. Obviously, it cannot be set up to resist the enforcement of an imprescriptible legal right.

APPEARANCES OF COUNSEL

Gaspar V. Tagalo & Rom-Voltaire C. Quizon for petitioners.
Ricardo C. Valmonte for respondents.

DECISION

NACHURA, *J.*:

This petition for review seeks the reversal of the Court of Appeals (CA) Decision[1] dated August 23, 2001, and Resolution dated December 10, 2001, which denied petitioners' Motion to Dismiss Civil Case No. 2115, an action for Annulment of Transfer Certificate of Title and Deed of Absolute Sale.

The facts, as borne by the records, are as follows:

Dominga Lustre, who died on October 15, 1989, owned a residential lot which is located in San Antonio, Nueva Ecija, with an area of 390 square meters, and covered by Transfer Certificate of Title (TCT) No. NT-50384. On September 20, 1974, Dominga Lustre mortgaged the lot to spouses Sofronio and Natividad Santos (spouses Santos) for ₱38,000.00.[2]

On May 16, 1976, Dominga Lustre sold the property to Natividad M. Santos for ₱15,000.00 through a Deed of Absolute Sale.[3] The mortgage appears to have been canceled on March 20, 1976.[4] The cancellation of the mortgage and the sale of the property were both inscribed at the back of TCT No. NT-50384 on April 17, 1984.

As a result of the sale, TCT No. NT-50384 was canceled and TCT No. NT-183029 was issued in the name of the spouses Santos. Subsequently, the latter executed a Deed of Sale transferring the property to their son, Froilan M. Santos (petitioner). By virtue of this deed, TCT No. NT-183029 was canceled and TCT No. 193973[5] issued in the name of Froilan Santos.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga, concurring, *rollo*, pp. 76-85.

[2] CA *rollo*, pp. 101-102.

[3] *Id*. at 104.

[4] *Id*. at 103.

[5] *Id*. at 84.

On April 14, 1994, Cecilia Macaspac (also a petitioner) and Tarcisio Maniquiz, both heirs of Dominga Lustre, filed with the Regional Trial Court (RTC) of Gapan, Nueva Ecija, a Complaint for Declaration of the Inexistence of Contract, Annulment of Title, Reconveyance and Damages[6] against Froilan M. Santos. That case was docketed as Civil Case No. 1330. Later, the plaintiffs sought the amendment of the complaint to include Eusebio Maniquiz as plaintiff and to include a certification against forum shopping. However, the records in this case are bereft of any information as to whether the same was allowed by the trial court.[7] We note, however, that only Cecilia Macaspac executed a Verification and Certification against Forum Shopping[8] in that case.

According to the Amended Complaint in Civil Case No. 1330, plaintiffs Cecilia and Tarcisio are the legitimate children, while Eusebio is the spouse of Dominga Lustre, who allegedly left them the subject property when she died on October 15, 1989. They averred that the sale of the property to Natividad Santos was simulated, spurious or fake, and that they discovered that spouses Santos transferred the property to Froilan Santos when the latter filed an ejectment suit against them. Thereafter, Froilan Santos, through fraud and deceit, succeeded in transferring the property. On the mistaken belief that the sale between Dominga Lustre and Natividad Santos occurred on April 17, 1984, plaintiffs prayed that the trial court issue judgment —

1. Ordering the inexistence of sale dated April 17, 1984 between Dominga Lustre and Natividad Santos and subsequent thereto;

2. Ordering the cancellation of TCT No. NT-193973 in favor of defendant and *reconvey the same to the plaintiff*;

3. Ordering the defendant to pay plaintiffs the sum of ₱20,000.00 as attorney's fee, ₱20,000.00 as moral damages; ₱20,000.00 as litigation expenses; ₱20,000.00 as exemplary damages;

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[6] *Id*. at 78-80.

[7] *Id*. at 175-176.

[8] *Id*. at 176.

4. Ordering defendant to pay the cost of the suit;

5. General relief[s] are likewise prayed for in the premises. (Emphasis ours.)[9]

On September 12, 1994, the RTC, Branch 87, to which Civil Case No. 1330 was raffled, ordered the records of the case to be referred to the municipal trial court for adjudication on the ground that the assessed value of the subject property was below the amount within its jurisdiction.[10]

On May 14, 1999, while Civil Case No. 1330 was still pending, Dominga Lustre's other heirs, namely, Eusebio Maniquiz, Teresita Burgos, Tarcisio Maniquiz, Florita M. Reyes, and Lermie Maniquiz filed a Complaint for Annulment of Transfer Certificate of Title and Deed of Absolute Sale[11] against spouses Sofronio and Natividad Santos, Froilan Santos, Cecilia M. Macaspac, R Transport Corporation, and the Register of Deeds of Cabanatuan City, with the same RTC. Cecilia Macaspac, plaintiff in Civil Case No. 1330, was impleaded as defendant because she refused to join the other heirs as plaintiffs. The case was docketed as Civil Case No. 2115 and was raffled to Branch 34.

The complaint alleged that the spouses Santos simulated the Deed of Sale dated May 16, 1976 by forging Dominga Lustre's signature; that thereafter, the spouses Santos simulated another Deed of Sale transferring the property to Froilan Santos, which led to the issuance of TCT No. 193973 in his name; that this title became the basis of Froilan's ejectment suit against them; and that R Transport Corporation (also a petitioner), was claiming that it bought the property from Froilan but there was no evidence to prove such claim. According to the plaintiffs (herein respondents), they had been residing in the property since birth and the house standing on the lot was built by their ancestors. They posited that the transferees of the property could not be

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[9] *Id.* at 79-80.

[10] *Id.* at 177.

[11] *Rollo,* pp. 128-132.

considered as buyers in good faith. The complaint prayed that judgment be rendered:

> a. Annulling and declaring null and void the Deed of Absolute Sale, Annex C hereof; that between spouses Santos and their son Froilan; and that purportedly between defendant Froilan and defendant corporation;
>
> b. Annulling and declaring null and void Transfer Certificate of Title No. NT-183029 appearing to be in the name of defendant spouses; TCT No. NT-193973 in the name of defendant Froilan M. Santos and Transfer Certificate of Title, if any, in the name of defendant corporation;
>
> *c. Reinstating Transfer Certificate of Title No. NT-50384 in the name of Dominga Lustre* and directing the Register of Deeds to do so or to issue [a] new one in the name of the deceased Dominga Lustre and canceling all titles mentioned in the immediately preceding paragraph which [were] made to cancel Lustre's title;
>
> d. Ordering defendants, jointly and severally, to pay plaintiffs the following:
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> 1.) Moral damages of ₱200,000.00;
> 2.) Exemplary damages of ₱100,000.00;
> 3.) Attorney's fee of ₱50,000.00, plus cost of suit.
>
> Plaintiffs further pray for such other affirmative reliefs as are deemed just and equitable in the premises.[12]

Alleging that the plaintiffs' right of action for annulment of the Deed of Sale and TCT Nos. 183029 and 193973 had long prescribed and was barred by laches, petitioners filed a Motion to Dismiss Civil Case No. 2115.[13] They later filed an Omnibus/ Supplemental Motion to Dismiss on the ground of *litis pendentia*.[14]

On January 11, 2000, the RTC denied the Motion to Dismiss as well as the Supplemental Motion to Dismiss for lack of merit.[15]

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[12] *Id*. at 131-132. (Emphasis supplied.)

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

[14] *Id*. at 142.

[15] *Id*. at 123-125.

On April 5, 2000, the RTC denied the Joint Motion for Reconsideration filed by petitioners.[16]

They then filed a petition for *certiorari* with the Court of Appeals (CA), assailing the denial of their motion to dismiss. On August 23, 2001, the CA dismissed the petition for lack of merit based on its finding that the RTC did not commit grave abuse of discretion in denying the motion to dismiss.[17] On December 10, 2001, the CA denied petitioners' motion for reconsideration.[18]

In the assailed decision, the CA pronounced that the respondents were not guilty of forum shopping. There was no identity of parties because Cecilia Macaspac, who was a plaintiff in Civil Case No. 1330, was a defendant in Civil Case No. 2115; and there was only one defendant in Civil Case No. 1330, while there were several additional defendants in Civil Case No. 2115. Moreover, the reliefs demanded in the two cases differed. In Civil Case No. 1330, plaintiffs were seeking the declaration of the inexistence of a sale dated April 17, 1984, cancellation of Froilan M. Santos' certificate of title, and the reconveyance of the property to plaintiffs. On the other hand, plaintiffs in Civil Case No. 2115 were praying for the annulment of the Deed of Absolute Sale dated May 16, 1976, cancellation of TCT No. NT-183029 and the succeeding TCTs, and reinstatement of TCT No. NT-50384 in the name of Dominga Lustre.[19]

On the issue of prescription and laches, the CA declared that an action for the declaration of the inexistence of a contract does not prescribe, and laches could not have set in since there was no unreasonable delay in the filing of the case.[20]

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

[17] *Id*. at 76-84.

[18] *Id*. at 87.

[19] *Id*. at 82.

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

In this petition for review, the sole issue submitted for resolution is whether the RTC committed grave abuse of discretion in not dismissing the case based on forum shopping and prescription or laches.[21]

The petition has no merit. The RTC did not commit grave abuse of discretion in denying petitioners' motion to dismiss.

Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other.[22] Among its elements are identity of the parties, identity of the subject matter and identity of the causes of action in the two cases.[23]

The dispute in this case centers on whether there exist identity of causes of action and identity of parties between Civil Case No. 1330 and Civil Case No. 2115.

Concededly, the causes of action in Civil Case No. 1330 and Civil Case No. 2115 are identical. There is identity of causes of action if the same evidence needed in the first case will sustain the second action, and this principle applies even if the reliefs sought in the two cases are different.[24] Without a doubt, the same evidence will be necessary to sustain the causes of action in these two cases which are substantially based on the same series of transactions. In fact, similar reliefs are prayed for in the two cases. Both complaints ultimately seek the cancellation of the title of the alleged transferees and the recovery of the subject property.

Despite this similarity, however, we hold that respondents are not guilty of forum shopping because the element of identity of parties is not present.

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[21] *Id.* at 345.

[22] *Reyes v. Alsons Development and Investment Corporation,* G.R. No. 153936, March 2, 2007, 517 SCRA 244, 251.

[23] *Nery v. Leyson,* 393 Phil. 644, 654 (2000).

[24] *Korea Exchange v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224, 244.

In insisting that the parties are identical, petitioners stress that all the plaintiffs are heirs of Dominga Lustre, while the defendants are past and present holders of the certificates of title covering the subject property. They argue that Cecilia Macaspac's being a defendant in the second case does not change whatever interest she has in the former case, considering that she is an indispensable party in both cases. They posit that additional parties will not prevent the application of the rule on *res judicata*.[25]

While we agree with the CA that there is no identity of parties in the two cases, we do not agree with the rationale behind its conclusion. To recall, the CA ratiocinated that there was no identity of parties because Cecilia Macaspac, while a plaintiff in Civil Case No. 1330, is a defendant in Civil Case No. 2115, and there are several additional defendants in Civil Case No. 2115.

The CA appears to have overlooked the principle that what is required is only substantial, and not absolute, identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.[26] Moreover, the fact that the positions of the parties are reversed, *i.e.*, the plaintiffs in the first case are the defendants in the second case, or vice versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia.*[27]

Following these legal principles, it appears that there is identity of parties in the two cases. However, a closer look at the facts and a deeper understanding of pertinent jurisprudence will lead to a different conclusion: there is actually no identity of parties because the plaintiff in Civil Case No. 1330 does not, in fact,

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[25] *Rollo,* p. 348.

[26] *Sendon v. Ruiz*, 415 Phil. 376, 385 (2001).

[27] *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines Corporation,* G.R. No. 154618, April 14, 2004, 427 SCRA 593, 602.

share a common interest with the plaintiffs in Civil Case No. 2115.

As pointed out by petitioners, plaintiffs in both cases are the heirs of Dominga Lustre; they are therefore co-owners of the property. However, the fact of being a co-owner does not necessarily mean that a plaintiff is acting for the benefit of the co-ownership when he files an action respecting the co-owned property. Co-owners are not parties *inter se* in relation to the property owned in common. The test is whether the "additional" party, the co-owner in this case, acts in the same capacity or is in privity with the parties in the former action.[28]

Notably, plaintiff Cecilia Macaspac in Civil Case No. 1330 filed the complaint seeking the reconveyance of the property to her, and not to Dominga Lustre or her heirs. This is a clear act of repudiation of the co-ownership which would negate a conclusion that she acted in privity with the other heirs or that she filed the complaint in behalf of the co-ownership. In contrast, respondents were evidently acting for the benefit of the co-ownership when they filed the complaint in Civil Case No. 2115 wherein they prayed that TCT No. NT-50384 in the name of Dominga Lustre be reinstated, or a new certificate of title be issued in her name.

The petitioners and respondents have squabbled over whether the additional parties in the second case are indispensable or necessary parties on the assumption that the proper characterization of the parties will have a bearing on the determination of the existence of identity of parties. In support of their position, the petitioners cite *Juan v. Go Cotay*[29] when they theorize that "there is still identity of parties although in the second action there is one party who was not joined in the former action, if it appears that such party is *not a necessary party* either in the first or in the second action."[30]

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[28] *Nery v. Leyson, supra* note 23, at 655.

[29] 26 Phil. 328 (1913).

[30] *Rollo,* p. 350.

We note, however, that the party who was not impleaded in *Go Cotay* was, technically speaking, a necessary party (as opposed to an indispensable party as defined under the Rules of Court), being the plaintiff's wife who also had an interest in the case. Possibly, and, indeed, it seems probable that the petitioners may not have used the term "necessary party" in the strict legal sense. They could really have been referring to an "indispensable party." In challenging petitioners' allegation, respondents obviously understood the statement as referring to an indispensable party. They were, therefore, quick to point out that the additional plaintiffs in Civil Case No. 2115 are indispensable parties, being co-owners of the property.[31]

By this debate, the parties have only muddled the issue. The determination of whether there is identity of parties rests on the commonality of the parties' interest, regardless of whether they are indispensable parties or not. The issue of whether the additional parties are indispensable parties or not acquires real significance only when considering the validity of the judgment that will be rendered in the earlier case. This is so, because if the additional parties are indispensable parties, then no valid judgment can be rendered against them in the earlier case in which they did not participate, and this will foreclose the application of *res judicata* which requires the existence of a final judgment.

Without question, a co-owner may bring an action to recover the co-owned property without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. In such case, the other heirs are merely necessary parties. Parenthetically, the inclusion among the defendants of Cecilia Macaspac, who refused to join the other heirs as plaintiffs in Civil Case No. 2115, was not actually necessary.

However, if the action is for the benefit of the plaintiff alone, as in Civil Case No. 1330, the action will not prosper unless he impleads the other co-owners who are indispensable parties.[32]

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[31] *Id.* at 372-373.

[32] *Baloloy v. Hular*, G.R. No. 157767, September 9, 2004, 438 SCRA 80, 90-91.

The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[33] The trial court does not acquire jurisdiction over the indispensable parties who are not impleaded in the case, and judgment thereon cannot be valid and binding against them. A decision that is null and void for want of jurisdiction on the part of the trial court is not a decision in contemplation of law; hence, it can never become final and executory.[34]

Worth mentioning is the doctrine that any adverse ruling in the earlier case will not, in any way, prejudice the heirs who did not join, even if such case was actually filed in behalf of all the co-owners. In fact, if an action for recovery of property is dismissed, a subsequent action by a co-heir who did not join the earlier case should not be barred by prior judgment. [35] Any judgment of the court in favor of the co-owner will benefit the others, but if the judgment is adverse, the same cannot prejudice the rights of the unimpleaded co-owners.[36]

Applying these principles to the instant case, we rule that there is no identity of parties and thus, the second action is not barred by *litis pendentia.*

On the issue of prescription and laches, we fully agree with the CA. The action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe.[37] Moreover, a person acquiring property

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[33] *Orbeta v. Sendiong,* G.R. No. 155236, July 8, 2005, 463 SCRA 180, 192.

[34] *Arcelona v. Court of Appeals,* 345 Phil. 250, 267 (1997).

[35] *Nery v. Leyson, supra* note 29, at 655-656.

[36] *Baloloy v. Hular*, G.R. No. 157767, September 9, 2004, 438 SCRA 80, 91.

[37] *Philippine National Bank v. Heirs of Estanislao Militar and Deogracias Militar*, G.R. No. 164801, August 18, 2005, 467 SCRA 377, 388.

through fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance based on an implied trust prescribes in ten years. And in such case, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. Otherwise, if plaintiff is in possession of the property, prescription does not commence to run against him. Thus, when an action for reconveyance is nonetheless filed, it would be in the nature of a suit for quieting of title, an action that is imprescriptible.[38]

It follows then that the respondents' present action should not be barred by laches. Laches is a doctrine in equity, which may be used only in the absence of, and never against, statutory law. Obviously, it cannot be set up to resist the enforcement of an imprescriptible legal right.[39]

Finally, it is true that an action for reconveyance will not prosper when the property sought to be reconveyed is in the hands of an innocent purchaser for value. In this case, however, the protection of the rights of any alleged innocent purchaser is a matter that should be threshed out in the main case and not in these proceedings.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated August 23, 2001, and Resolution dated December 10, 2001, are *AFFIRMED*.

SO ORDERED.

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

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[38] *Spouses Anita and Honorio Aguirre v. Heirs of Lucas Villanueva,* G.R. No. 169898, June 8, 2007, 524 SCRA 492, 494.

[39] *Philippine National Bank v. Heirs of Estanislao Militar and Deogracias Militar*, *supra* note 37, at 389.

THIRD DIVISION

[G.R. No. 154155. August 6, 2008]

THE OMBUDSMAN, *petitioner, vs.* **BEN C. JURADO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; EXTENDS TO ALL PARTIES IN ALL CASES, IN ALL PROCEEDINGS. —** Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.* The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.

2. **ID.; ID.; ID.; ID.; ON FLEXIBILITY OF THE RULE. —** It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

3. **ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING VIOLATION OF RULE. —** In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

4. **ID.; ID.; ID.; ID.; ID.; DELAY IN CHARGING, NOT NECESSARILY A VIOLATION OF THE RIGHT TO SPEEDY DISPOSITION OF A CASE. —** Respondent's right to the speedy disposition of cases has not been violated. Prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of – he was not made the subject of any complaint or made to undergo any investigation. As held in *Dimayacyac v. Court of Appeals:* In the *Tatad* case, there was a hiatus in the proceedings between the termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985. The Court found that "political motivations played a vital role in activating and propelling the prosecutorial process" against then Secretary Francisco S. Tatad. In the *Angchangco* case, the criminal complaints remained pending in the Office of the Ombudsman for more than six years despite the respondent's numerous motions for early resolution and the respondent, who had been retired, was being unreasonably deprived of the fruits of his retirement because of the still unresolved criminal complaints against him. In both cases, we ruled that the period of time that elapsed for the resolution of the cases against the petitioners therein was deemed a violation of the accused's right to a speedy disposition of cases against them. In the present case, no proof was presented to show any persecution of the accused, political or otherwise, unlike in the Tatad case. **There is no showing that petitioner was made to endure any vexatious process during the two-year period before the filing of the proper informations, unlike in the Angchangco case where petitioner therein was deprived of his retirement benefits**

for an unreasonably long time. Thus, the circumstances present in the *Tatad* and *Angchangco* cases justifying the "radical relief" granted by us in said cases are not existent in the present case.

5. ID.; ID.; ID.; ID.; BALANCING TEST; ELUCIDATED. — In making a determination of what constitutes a violation of the right to the speedy disposition of cases, this Court has time and again employed the *balancing test.* The balancing test first adopted by the United States Supreme Court in *Barker v. Wingo* was crucial in the Court's resolution of the recent case of *Perez v. People.* The Court went on to adopt a middle ground: the "balancing test," in which "the conduct of both the prosecution and defendant are weighed." Mr. Justice Powell, *ponente*, explained the concept, thus: A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge. Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. We have already discussed the third factor,

the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial. A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

6. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT; NOT NECESSARILY DISMISSED WITH THE DISMISSAL OF CRIMINAL CHARGES BASED ON SAME SET OF FACTS; DIFFERENCE IN THE REQUIRED EVIDENCE, PRESENT. —** It is elementary that the dismissal of criminal charges will not necessarily result in the dismissal of the administrative complaint based on the same set of facts. The quantum of evidence in order to sustain a conviction for a criminal case is different from the proof needed to find one administratively liable. Rule 133, Section 2 of the Rules of Court provides that for criminal cases, conviction is warranted only when the guilt is proven *beyond reasonable doubt*. Proof beyond reasonable doubt is defined as moral certainty, or that degree of proof which produces conviction in an unprejudiced mind. On the other hand, the quantum of evidence necessary

to find an individual administratively liable is *substantial evidence*. Rule 133, Section 5 of the Rules of Court states: Sec. 5. *Substantial evidence*. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs. In Office of the Court Administrator v. Enriquez, the Court ruled: x x x Be that as it may, its dismissal of the criminal case on the ground of insufficiency of evidence was never meant, as respondent doggedly believed and arrogantly asserted, to foreclose administrative action against him or to give him a clean bill of health in all respects. The Sandiganbayan, in dismissing the same, was simply saying that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt, a condition *sine qua non* for conviction because of the presumption of innocence which the Constitution guarantees an accused. Lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then too, there is the "substantial evidence" rule in administrative proceedings which merely requires in these cases such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Verily, respondent can still be held administratively liable despite the dismissal of the criminal charges against him.

7. **ID.; CIVIL SERVICE; PUBLIC OFFICE AS A PUBLIC TRUST; NEGLECT OF DUTY WARRANTS ADMINISTRATIVE SANCTION; CASE AT BAR. —** It bears stressing that public office is a public trust. When a public officer takes his oath of office, he binds himself to perform the duties of his office faithfully and to use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of his duties, he is to use that prudence, caution and attention which careful men use in the management of their affairs. Public

officials and employees are therefore expected to act with utmost diligence and care in discharging the duties and functions of their office. Unfortunately, respondent failed to measure up to this standard. Clearly, respondent should be held administratively liable for neglect of duty. Neglect of duty is the failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference." The Warehousing Inspection Division is the inspection and audit arm of the Bureau of Customs. The WID is the department primarily tasked to conduct the ocular inspection of the applications for a customs bonded warehouse. It was within the scope of responsibility of respondent as Chief of the WID to ensure that the reports submitted by his subordinates are accurate. We agree with petitioner that as Chief of the WID, it was absurd for respondent to blindly rely on the report and recommendation of his subordinate. Respondent should have exercised more prudence, caution and diligence in verifying the accuracy of the report submitted to him by Baliwag. By merely acquiescing to the report and recommendation of his subordinate without verifying its accuracy, respondent was negligent in overseeing that the duties and responsibilities of the WID were performed with utmost responsibility. Respondent failed to exercise the degree of care, skill and diligence which the circumstances warrant.

8. **ID.; ID.; ID.; AS A RULE, SUPERIOR OFFICERS ARE NOT LIABLE FOR THE ACTS OF THEIR SUBORDINATES; EXCEPTIONS. —** Although as a general rule, superior officers cannot be held liable for the acts of their subordinates, there are exceptions: (1) where, being charged with the duty of employing or retaining his subordinates, he negligently or willfully employs or retains unfit or improper persons; or (2) where, being charged with the duty to see that they are appointed and qualified in a proper manner, he negligently or willfully fails to require of them the due conformity to the prescribed regulations; or (3) where he so carelessly or negligently oversees, conducts or carries on the business of his office as to furnish the opportunity for the default; or (4) and a *fortiori* where he has directed, authorized or cooperated in the wrong.

APPEARANCES OF COUNSEL

Tupaz Jurado De Guzman & Villarica for respondent.

DECISION

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

NO less than Our Constitution guarantees the right not just to a speedy trial but to the speedy disposition of cases.[1] However, it needs to be underscored that speedy disposition is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[2]

This is a petition for review on *certiorari* of the Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 58925. The CA reversed and set aside the decision and resolution of the Ombudsman finding respondent Bureau of Customs Division Chief administratively liable for neglect of duty, penalizing him with suspension for six months without pay.

The Facts

Sometime in 1992, Maglei Enterprises Co., (Maglei), a partnership owned by Rose Cuyos and John Elvin C. Medina, filed an application before the Bureau of Customs for the operation of a Customs Bonded Warehouse (CBW)-Manufacturing Warehouse. As part of the evaluation of Maglei's application, CBW Supervisor Juanito A. Baliwag conducted an inspection of Maglei's compliance with structural requirements. Baliwag submitted a report[4] recommending approval of the application.

On March 16, 1992, respondent Jurado, who was then the Chief of the Warehouse Inspection Division, adopted the

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[1] CONSTITUTION (1987), Art. 3, Sec. 16:

"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

[2] *Binay v. Sandiganbayan,* G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65, 93.

[3] *Rollo,* pp. 34-43. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Regalado E. Maambong, concurring.

[4] *Id.* at 44.

recommendation of Baliwag. Then he indorsed the papers of Maglei to the Chief of the Miscellaneous Manufacturing Bonded Warehouse Division (MMBWD). The indorsement letter, in full, reads:

1st Indorsement
16 March 1992

Respectfully forwarded to the Chief, MMBWD, This Port, the within papers relative to the request of MAGLEI ENTERPRISES CO., to establish and operate a Customs Manufacturing Bonded Warehouse, pursuant to CMO 39-91, to be located at 129 Jose Bautista St., Caloocan City, together with the attached report submitted by CBW Supervisor J. A. Baliwag of this Office, inviting attention to the recommendation stated therein to which the undersigned concurs.

(Sgd.)
Atty. Ben C. Jurado
Chief
Warehousing Inspection Division[5]

Maglei's application was submitted to Rolando A. Mendoza, Chief of the MMBWD for his comment and recommendation. In a Memorandum (for the District Collector of Customs) dated March 20, 1992, Mendoza reported that Maglei has substantially complied with the physical and documentary requirements relative to their application for the operation of a Customs Bonded Warehouse. Mendoza further recommended that Maglei's application be approved. Following the indorsements of the different divisions of the Bureau of Customs – Emma M. Rosqueta (District Collector of Customs); Titus B. Villanueva (Deputy Commissioner for Assessment and Operations); and Atty. Alex Gaticales (Executive Director of the Customs — SGS Import Valuation and Classification Committee) — Maglei's application was recommended for approval.

On June 25, 1992, Maglei was finally granted the authority to establish and operate CBW No. M-1467 located at 129 J.

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5 *Id.* at 45.

Bautista, Caloocan City. By virtue of such authority, Maglei imported various textile materials which were then transferred to the said warehouse. The textiles were to be manufactured into car covers for exportation.

Subsequently, on July 8 and 22, 1992, MMBWD Senior Storekeeper Account Officer George O. Dizon was tasked by MMBWD Chief Mendoza to check and verify the status of Maglei's CBW. Dizon reported that the subject CBW was existing and operating. However, upon further verification by the Bureau of Customs, it was discovered that the purported CBW of Maglei did not exist at the alleged site in Caloocan City. Rather, what was reported located at the site was a School of the Divine Mercy. Only a small signboard bearing the name "Maglei Enterprises Company" was posted inconspicuously in the corner of the lot. Further investigation revealed that Maglei's shipment of textile materials disappeared, without proof of the materials being exported or the corresponding taxes being paid.

Ombudsman Disposition

On August 11, 1992, the Bureau of Customs initiated a complaint against George P. Dizon, Rose Cuyos and John Elvin C. Medina for prosecution under the Tariff and Customs Code. After receiving a copy of the resolution, the Ombudsman conducted the investigation on the complaint.

On February 13, 1996, the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman (OMB) recommended that the Resolution of the Bureau of Customs be reversed. The EPIB further recommended that the complaint against George P. Dizon be dismissed and another one be filed against Emma Rosqueta and Atty. Rolando Mendoza, subject to further fact-finding investigation by the Fact Finding Bureau (FFB) of the OMB. With regard to the case against Rose Cuyos and John Medina, the EPIB recommended that the charges be taken up together with those of Rosqueta and Atty. Mendoza. The case was then forwarded to the FFB.

On September 29, 1997, the FFB submitted its report with the following recommendations:

WHEREFORE, premises considered; the undersigned investigators respectfully recommend the following:

1. That criminal charges for violation of Section 3(e) of RA 3019 and Section 3081 of the Tariff and Customs Code be filed against the following officials namely:

    a. Emma M. Rosqueta
    Director Collector, Port of Manila

    b. Rolando A. Mendoza
    Chief, Miscellaneous Manufacturing
    Bonded Warehouse Division

    c. Alex Gaticales
    Executive Staff, Deputy Commissioner

    d. Ben C. Jurado
    Chief, Warehouse Inspection Division
    CBW Supervisor

    e. Juanito A. Baliwag
    CBW Supervisor

    f. George P. Dizon
    Senior Storekeeper

    All of the Bureau of Customs, and

    g. Rose Cuyos and John Elvin C. Medina
    Owner, Maglei Enterprises
    Private Respondents

2. That records of this case be forwarded to the EPIB, this Office for the conduct of the required preliminary investigation

3. That administrative charges for dishonesty and gross misconduct be likewise filed against the above-named BOC officials before the AAB, this Office.[6]

On October 17, 1997, the OMB approved the above recommendation.

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[6] *Id*. at 56-57.

On August 2, 1999, the OMB dismissed the criminal complaint for falsification of public documents and violation of Section 3(e) of Republic Act (R.A.) No. 3019 and Section 3601 of the Tariff and Customs Code filed against respondent. The complaint was dismissed on the ground of lack of *prima facie* evidence to charge respondent of the crime.

On the other hand, on August 16, 1999, the Administrative Adjudication Bureau (AAB) of the OMB rendered judgment finding respondent administratively liable, penalizing him with suspension for six (6) months without pay. Respondent's motion for reconsideration of his suspension was likewise denied by the Ombudsman.

Aggrieved, respondent appealed to the CA. In his appeal, respondent argued, among others, that his right to a speedy disposition of his case had been violated; that the administrative case against him should have been dismissed following the dismissal of the criminal charges against him; and that there is no substantial evidence on record to make him administratively liable.

CA Disposition

In a Decision dated July 3, 2002, the CA reversed and set aside the questioned decision and resolution of the OMB. The dispositive part of the CA decision runs in this wise:

> Foregoing premises considered, the Petition is **GIVEN DUE COURSE.** Resultantly, the challenged Decision/Resolution of the Ombudsman is hereby **REVERSED** and **SET ASIDE**. No costs.
>
> SO ORDERED.[7]

In ruling in favor of respondent, the appellate court ratiocinated:

> Indeed, we are in accord with Petitioner's arguments that his right to speedy disposition of cases had been violated. To be sure, Section 16, Article III of the 1987 Constitution provides thus:

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[7] *Id*. at 42-43.

> "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

x x x x x x x x x

In the case at bench, the incident which gave rise to the complaint against Petitioner happened on March 16, 1992. And yet it was only on November 20, 1997 or a lapse of more than five (5) years that the case relative to the said incident was filed against him. Records disclose that on August 11, 1992, the complaint only charged George O. Dizon and 2 others. Then on February 13, 1996 or after almost 4 years, the Evaluation and Preliminary Investigation Bureau of the OMB made another recommendation which ultimately included Petitioner as among those to be charged. From February 13, 1996 to November 20, 1997 or a period of more than one (1) year, what took them so long to decide that Petitioner be included in the charges?

From the foregoing unfolding of events, it is quite clear that it took the Ombudsman almost six (6) years to decide that a case be filed against Petitioner. Under such circumstances, We cannot fault Petitioner for invoking violation of his right to speedy disposition of his case.

More importantly, We do not agree that Petitioner, under attendant facts and circumstances can be held liable for negligence. First of all, Petitioner as, Deputy Commissioner for Assessment and Operation, did not have the duty to make inspection on the alleged warehouse. Such duty belongs to other personnel/officers. Secondly, in Petitioner's 1st Indorsement dated March 22, 1992, he merely stated thus:

> "Respectfully forwarded to the Chief, MMBWD, This Port, the within papers relative to the request of MAGLEI ENTERPRISES CO., to establish and operate a Customs Manufacturing Bonded Warehouse, pursuant to CMO 39-91, to be located at 129 Jose Bautista St., Caloocan City, together with the attached report submitted by CBW Supervisor J.A. Baliwag of this Office, inviting attention to the recommendation stated therein to which the undersigned concurs." (p. 185, *Rollo*)

A careful reading of said 1st Indorsement undoubtedly shows that Petitioner invited attention to the inspector's (Supervisor Baliwag) qualified recommendation, to wit:

> "Approval respectfully recommended, subject to re-inspection, before transfer of imported goods." (Underscoring for emphasis.)

After Petitioner made the indorsement, he no longer had any participation nor was he under obligation or duty to make a re-inspection. If afterwards damage was suffered, Petitioner cannot be faulted but rather only those who had the duty to make re-inspection. It is precisely because of such fact that the criminal complaint filed against Petitioner did not prosper. Where there is no duty or responsibility, one should not be held liable for neglect, as what has been done to Petitioner.[8]

Issues

Petitioner Ombudsman now comes to this Court, raising twin issues:

I.

WHETHER OR NOT RESPONDENT'S RIGHT TO SPEEDY TRIAL WAS VIOLATED;

II.

WHETHER OR NOT RESPONDENT WAS NEGLIGENT IN THE PERFORMANCE OF HIS DUTY, AS THE CHIEF OF THE WAREHOUSING INSPECTION DIVISION, DESPITE THE FACT THAT HE DID NOT ENSURE THAT THE SUPPOSED WAREHOUSE WAS NOT IN EXISTENCE.[9]

Our Ruling

No violation of respondent's right to speedy disposition of cases.

We shall first tackle the issue on speedy disposition of cases.

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative*

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[8] *Id*. at 40-41.

[9] *Id*. at 22.

bodies. The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.[10]

It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[11] Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.[12]

In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[13]

Gleaned from the foregoing, We find that respondent's right to the speedy disposition of cases has not been violated.

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[10] *Lopez, Jr. v. Office of the Ombudsman,* G.R. No. 140529, September 6, 2001, 364 SCRA 569, 578.

[11] *Yulo v. People,* G.R. No. 142762, March 4, 2005, 452 SCRA 705.

[12] *Caballero v. Alfonso, Jr.,* G.R. No. L-45647, August 21, 1987, 153 SCRA 153, 163.

[13] *Dela Peña v. Sandiganbayan,* G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485; *Alvizo v. Sandiganbayan,* G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63-64.

First. It is undisputed that the FFB of the OMB recommended that respondent together with other officials of the Bureau of Customs be criminally charged for violation of Section 3(e) of R.A. No. 3019 and Section 3601 of the Tariff and Customs Code. The same bureau also recommended that respondent be administratively charged. Prior to the fact-finding report of the FFB of the OMB, respondent was never the subject of any complaint or investigation relating to the incident surrounding Maglei's non-existent customs bonded warehouse. In fact, in the original complaint filed by the Bureau of Customs, respondent was not included as one of the parties charged with violation of the Tariff and Customs Code. With respect to respondent, there were **no** ***vexatious, capricious, and oppressive delays*** because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB.

Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of – he was not made the subject of any complaint or made to undergo any investigation. As held in *Dimayacyac v. Court of Appeals*:[14]

> In the *Tatad* case, there was a hiatus in the proceedings between the termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985. The Court found that "political motivations played a vital role in activating and propelling the prosecutorial process" against then Secretary Francisco S. Tatad. In the *Angchangco* case, the criminal complaints remained pending in the Office of the Ombudsman for more than six years despite the respondent's numerous motions for early resolution and the respondent, who had been retired, was being unreasonably deprived of the fruits of his retirement because of the still unresolved criminal complaints against him. In both cases, we ruled that the period of time that elapsed for the resolution of the

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[14] G.R. No. 136264, May 28, 2004, 430 SCRA 121.

cases against the petitioners therein was deemed a violation of the accused's right to a speedy disposition of cases against them.

In the present case, no proof was presented to show any persecution of the accused, political or otherwise, unlike in the Tatad case. **There is no showing that petitioner was made to endure any vexatious process during the two-year period before the filing of the proper informations, unlike in the *Angchangco* case where petitioner therein was deprived of his retirement benefits for an unreasonably long time.** Thus, the circumstances present in the *Tatad* and *Angchangco* cases justifying the "radical relief" granted by us in said cases are not existent in the present case.[15] (Emphasis supplied)

Second. Even if We were to reckon the period from when respondent was administratively charged to the point when the Ombudsman found respondent administratively liable, We still find no violation of the right to speedy disposition of cases.

In making a determination of what constitutes a violation of the right to the speedy disposition of cases, this Court has time and again employed the *balancing test*. The balancing test first adopted by the United States Supreme Court in *Barker v. Wingo*[16] was crucial in the Court's resolution of the recent case of *Perez v. People*:[17]

The Court went on to adopt a middle ground: the "balancing test," in which "the conduct of both the prosecution and defendant are weighed." Mr. Justice Powell, *ponente*, explained the concept, thus:

> A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

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[15] *Dimayacyac v. Court of Appeals, id*. at 130-131.

[16] 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

[17] G.R. No. 164763, February 12, 2008.

The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If

witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.[18] (Underscoring supplied)

The Court likewise held in *Dela Peña v. Sandiganbayan*:[19]

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[20]

To reiterate, there is a violation of the right to speedy disposition of cases when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.[21]

In *Tatad v. Sandiganbayan*,[22] this Court found the delay of almost three (3) years in the conduct of the preliminary investigation violative of the rights of the accused to due process and speedy disposition of cases. Said the Court:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of

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[18] *Perez v. People, id.*, citing *Barker v. Wingo, supra* note 16.

[19] *Supra* note 13.

[20] *Dela Peña v. Sandiganbayan, id.* at 485.

[21] *Lopez, Jr. v. Office of the Ombudsman, supra* note 10.

[22] G.R. Nos. 72335-39, March 21, 1998, 159 SCRA 70.

preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and 1987 Constitution), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstances obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True — but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of the preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.[23]

Too, in *Angchangco v. Ombudsman*,[24] this Court ruled that the delay of almost six (6) years in resolving the criminal charges

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[23] *Tatad v. Sandiganbayan, id.* at 82-83.

[24] G.R. No. 122728, February 13, 1997, 268 SCRA 301.

constitutes a violation of the right of the accused to due process and speedy disposition of the cases against them.

Here, the circumstance attendant in *Tatad* and *Angchangco* are clearly absent. Records reveal that on September 29, 1997, the FFB of the OMB recommended that respondent be criminally and administratively charged. Subsequently, the OMB approved the recommendation on October 17, 1997. Respondent submitted his counter-affidavit on February 2, 1998 and motion to dismiss on October 8, 1998 before the Administrative Adjudication Bureau of the OMB. On August 16, 1999, the AAB rendered a decision finding petitioner administratively liable for neglect of duty. More or less, a period of two (2) years lapsed from the fact-finding report and recommendation of the FFB until the time that the AAB rendered its assailed decision.

To our mind, the time it took the Ombudsman to complete the investigation can hardly be considered an unreasonable and arbitrary delay as to deprive respondent of his constitutional right to the speedy disposition of his case. Further, there is nothing in the records to show that said period was characterized by delay which was vexatious, capricious or oppressive. There was no inordinate delay amounting to a violation of respondent's constitutional rights. The assertion of respondent that there was a violation of his right to the speedy disposition of cases against him must necessarily fail.

Respondent administratively liable for neglect of duty.

It is elementary that the dismissal of criminal charges will not necessarily result in the dismissal of the administrative complaint based on the same set of facts.[25] The quantum of evidence in order to sustain a conviction for a criminal case is different from the proof needed to find one administratively liable. Rule 133, Section 2 of the Rules of Court provides that

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[25] *Dela Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region,* G.R. No. 146739, January 16, 2004, 420 SCRA 113, 124.

for criminal cases, conviction is warranted only when the guilt is proven *beyond reasonable doubt*. Proof beyond reasonable doubt is defined as moral certainty, or that degree of proof which produces conviction in an unprejudiced mind.[26] On the other hand, the quantum of evidence necessary to find an individual administratively liable is *substantial evidence.* Rule 133, Section 5 of the Rules of Court states:

> Sec. 5. *Substantial evidence*. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Underscoring supplied)

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.[27]

In *Office of the Court Administrator v. Enriquez*,[28] the Court ruled:

> x x x Be that as it may, its dismissal of the criminal case on the ground of insufficiency of evidence was never meant, as respondent doggedly believed and arrogantly asserted, to foreclose administrative action against him or to give him a clean bill of health in all respects. The Sandiganbayan, in dismissing the same, was simply saying that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt, a condition *sine qua non* for conviction because of the presumption of innocence which the Constitution guarantees

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[26] RULES OF COURT, Rule 133, Sec. 2:

Sec. 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind.

[27] Regalado, F.D., *Remedial Law Compedium*, Vol. II, p. 850.

[28] A.M. No. P-89-290, January 29, 1993, 218 SCRA 1.

an accused. Lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, thought insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then too, there is the "substantial evidence" rule in administrative proceedings which merely requires in these cases such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29]

Verily, respondent can still be held administratively liable despite the dismissal of the criminal charges against him.

We now discuss the administrative liability of respondent for neglect of duty. We opt to reexamine the records considering the divergent findings of the Ombudsman and the CA.

It is undisputed that respondent was the Chief of the Warehousing Inspection Division (WID) of the Bureau of Customs. The WID is the inspection and audit arm of the District Collector of Customs.

On March 16, 1992, CBW Inspector Baliwag submitted a report to respondent showing the result of the ocular inspection of the proposed warehouse of applicant Maglei. The report stated: "*approval respectfully recommended subject to re-inspection before transfer of imported goods is allowed*."[30]

On March 16, 1992, respondent, as Chief of the WID, issued a 1st Indorsement[31] concurring with the recommendation of CBW Inspector Baliwag that the application of Maglei be approved.

Respondent's indorsement was then submitted to the Chief of the MMBWD for comment and recommendation. The Chief of the MMBWD eventually recommended that Maglei's application be approved since it has complied with all the necessary physical and documentary requirements. Following the indorsements of the different divisions of the Bureau of Customs,

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[29] *Office of the Court Administrator v. Enriquez, id*. at 10.

[30] *Rollo,* p. 44.

[31] *Id*. at 45.

Maglei was eventually granted the authority to operate a CBW despite the fact that the records disclose that there was no actual warehouse to speak of.

Respondent posits that since he was not the approving officer for application for CBWs nor was it his duty or obligation to conduct re-inspection of the subject warehouse premises, he cannot be held liable for neglect of duty.

The CA, in its decision, declared that respondent cannot be held liable for negligence for the simple reason that it was not respondent's duty to make the inspection and verification of Maglei's application.

We cannot agree.

The finding of the Ombudsman in OMB-ADM-0-97-0656 is more in accord with the evidence on record:

> Evidence on record shows that on 16 March 1992, respondent Juanito Baliwag (Customs Bonded Warehouse Supervisor) submitted an Inspection Report of the same date showing the result of an ocular inspection of the proposed warehouse of applicant Maglei Enterprises with the recommendation: "approval respectfully recommended subject to re-inspection before the transfer of imported goods is allowed" and with the observation that construction is going on for compartments for raw materials, finished products and wastages by products. On the same date, 16 March 1992, respondent Ben Jurado (Chief, Warehousing Inspection Division) issued 1st Indorsement concurring with the recommendation of CBW Inspector and co-respondent Juanito Baliwag for the approval of the application.
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> x x x x x x x x x
>
> On 08 July 1992, respondent Rolando Mendoza directed George Dizon (Documents Processor) to verify the existence and operation of several bonded warehouses including the warehouse of applicant Maglei Enterprises. On 23 July 1992, the same George Dizon was again directed by respondent Rolando Mendoza to verify the transfer of shipment covered Boat No. 13853454 in a container van with No. GSTV 824227 to the warehouse of Maglei Enterprises (CBW No. M-1467). In those two occasions, respondent George Dizon

reported the existence of the applicant's Warehouse located at No. 129 Jose Bautista Avenue, Caloocan City.

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Evidence on records likewise revealed that No. 129 Jose Bautista Avenue, Caloocan City which was given as the location address of CBW No. M-1467 is actually the address of a school, that of the School of Divine Mercy.

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While respondent Dizon was authorized to verify the existence of Maglei Enterprises Warehouse, it is admitted that he did not even look and see the premises of the alleged warehouse. Likewise, CBW Supervisor and co-respondent Baliwag made a report on the existence of the bonded warehouse earlier on 16 March 1992 in his Compliance with Structural Requirements For Customs Bonded Warehouse Inspection Report. Both Dizon and Baliwag reported the existence of the Warehouse in their respective and separate reports.

On the basis of the foregoing undisputed facts, it is apparent that the immediate cause of the injury complained of was occasioned not only by the failure of the CBW Inspectors to conduct an ocular inspection of the premises in a manner and in accordance with the existing Customs rules and regulations as well as the failure of their immediate supervisors to verify the accuracy of the reports, but also by subverting the reports by making misrepresentation as to the existence of the warehouse.

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Respondent, Ben Jurado, the Chief of the WID, cannot likewise escape liability for Neglect of Duty since his Office is the inspection arm of the District Collector of Customs.[32]

It bears stressing that public office is a public trust.[33] When a public officer takes his oath of office, he binds himself to perform the duties of his office faithfully and to use reasonable

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[32] *Id*. at 79-84.

[33] Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice and lead modest lives. (Emphasis supplied)

skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of his duties, he is to use that prudence, caution and attention which careful men use in the management of their affairs.[34] Public officials and employees are therefore expected to act with utmost diligence and care in discharging the duties and functions of their office. Unfortunately, respondent failed to measure up to this standard. Clearly, respondent should be held administratively liable for neglect of duty.

Neglect of duty is the failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference."[35]

As adverted to earlier, the Warehousing Inspection Division is the inspection and audit arm of the Bureau of Customs. The WID is the department primarily tasked to conduct the ocular inspection of the applications for a customs bonded warehouse. It was within the scope of responsibility of respondent as Chief of the WID to ensure that the reports submitted by his subordinates are accurate. We agree with petitioner that as Chief of the WID, it was absurd for respondent to blindly rely on the report and recomendation of his subordinate. Respondent should have exercised more prudence, caution and diligence in verifying the accuracy of the report submitted to him by Baliwag.

Although as a general rule, superior officers cannot be held liable for the acts of their subordinates. However, there are exceptions: (1) where, being charged with the duty of employing or retaining his subordinates, he negligently or willfully employs or retains unfit or improper persons; or (2) where, being charged with the duty to see that they are appointed and qualified in a proper manner, he negligently or willfully fails to require of them the due conformity to the prescribed regulations; or (3) where he so carelessly or negligently oversees, conducts or carries on the business of his office as to furnish the opportunity for

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[34] *Farolan v. Solmac Marketing Corporation,* G.R. No. 83589, March 13, 1991, 195 SCRA 168, 177-178.

[35] *Dajao v. Lluch,* 429 Phil. 620, 626 (2002).

the default; or (4) and a *fortiori* where he has directed, authorized or cooperated in the wrong.[36]

By merely acquiescing to the report and recommendation of his subordinate without verifying its accuracy, respondent was negligent in overseeing that the duties and responsibilities of the WID were performed with utmost responsibility. Respondent failed to exercise the degree of care, skill, and diligence which the circumstances warrant.

WHEREFORE, the petition is *GRANTED.* The Decision of the Court of Appeals in CA-G.R. SP No. 58925 is *REVERSED AND SET ASIDE*. The Decision of the Ombudsman in OMB-ADM-0-97-0656 finding respondent guilty of neglect of duty is *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 155450. August 6, 2008]

REPUBLIC OF THE PHILIPPINES represented by the Regional Executive Director, Department of Environment and Natural Resources, Regional Office No. 2, *petitioner, vs.* **COURT OF APPEALS, HEIRS OF ANTONIO CARAG and VICTORIA TURINGAN, THE REGISTER OF DEEDS OF CAGAYAN, and the COURT OF FIRST INSTANCE OF CAGAYAN,** *respondents.*

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[36] Cruz, C.L., *The Law of Public Officers*, 1999 ed., pp. 149-150.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; GROUNDS; LACK OF JURISDICTION; ALLEGED IN CASE AT BAR. —** The Court of Appeals ruled that petitioner failed to allege either of the grounds of extrinsic fraud or lack of jurisdiction in the complaint for annulment of decree. We find otherwise. Petitioner clearly alleged in the complaint and amended complaint that it was seeking to annul Decree No. 381928 on the ground of the trial court's lack of jurisdiction over the subject land, specifically over the disputed portion, which petitioner maintained was classified as timber land and was not alienable and disposable.

2. **ID.; ID.; ID.; ID.; ID.; ABSENCE OF OTHER REMEDIES, NEED NOT BE ALLEGED. —** The Court of Appeals also dismissed the complaint on the ground of petitioner's failure to allege that the "ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available." In *Ancheta v. Ancheta,* we ruled: In a case where a petition for annulment of judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either 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. Since petitioner's complaint is grounded on lack of jurisdiction over the subject of the action, petitioner need not allege that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.

3. **ID.; ID.; ID.; PROCEDURE; COURT OF APPEALS MAY TRY FACTUAL ISSUES RAISED FOR THE COMPLETED DETERMINATION OF A CASE. —** The Court of Appeals ruled that the issues raised in petitioner's complaint were factual in nature and should be threshed out in the proper trial court in accordance with Section 101 of the Public Land Act. Section 6, Rule 47 of the Rules of Court provides: SEC. 6.

Procedure. — The procedure in ordinary civil cases shall be observed. Should a trial be necessary, the reception of evidence may be referred to a member of the court or a judge of a Regional Trial Court. Therefore, the Court of Appeals may try the factual issues raised in the complaint for the complete and proper determination of the case.

4. **ID.; ID.; ID.; GROUNDS; LACK OF JURISDICTION; ELUCIDATED. —** Lack of jurisdiction, as a ground for annulment of judgment, refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. Jurisdiction over the subject matter is conferred by law and is determined by the statute in force at the time of the filing of the action.

5. **ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. —** Under the Spanish regime, all Crown lands were per se alienable. Unless specifically declared as mineral or forest zone, or reserved by the State for some public purpose in accordance with law, all Crown lands were deemed alienable. Petitioner has not alleged that the disputed portion had been declared as mineral or forest zone, or reserved for some public purpose in accordance with law, during the Spanish regime or thereafter. The land classification maps petitioner attached to the complaint also do not show that in 1930 the disputed portion was part of the forest zone or reserved for some public purpose. The certification of the National Mapping and Resources Information Authority, dated 27 May 1994, contained no statement that the disputed portion was declared and classified as timber land. The law prevailing when Decree No. 381928 was issued in 1930 was Act No. 2874, which provides: SECTION 6. The Governor-General, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into — (a) Alienable or disposable (b) Timber and (c) Mineral lands and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their government and disposition. Petitioner has not alleged that the Governor-General had declared the disputed portion of the subject property timber or mineral land pursuant to Section 6 of Act No. 2874. It is true that Section 8 of Act No. 2874 opens to disposition only those lands which have been declared alienable or disposable. However, Section 8 provides that lands which are already private lands, as well as lands on which a private claim

may be made under any law, are not covered by the classification requirement in Section 8 for purposes of disposition. This exclusion in Section 8 recognizes that during the Spanish regime, Crown lands were ***per se* alienable** unless falling under timber or mineral zones, or otherwise reserved for some public purpose in accordance with law. Clearly, with respect to lands excluded from the classification requirement in Section 8, trial courts had jurisdiction to adjudicate these lands to private parties. Petitioner has not alleged that the disputed portion had not become private property prior to the enactment of Act No. 2874. Neither has petitioner alleged that the disputed portion was not land on which a private right may be claimed under any existing law at that time. When the trial court issued the decision for the issuance of Decree No. 381928 in 1930, the trial court had jurisdiction to determine whether the subject property, including the disputed portion, applied for was agricultural, timber or mineral land. The trial court determined that the land was agricultural and that spouses Carag proved that they were entitled to the decree and a certificate of title. The government, which was a party in the original proceedings in the trial court as required by law, did not appeal the decision of the trial court declaring the subject land as agricultural. Since the trial court had jurisdiction over the subject matter of the action, its decision rendered in 1930, or 78 years ago, is now final and beyond review. The finality of the trial court's decision is further recognized in Section 1, Article XII of the 1935 Constitution. Thus, even as the 1935 Constitution declared that all agricultural, timber and mineral lands of the public domain belong to the State, it recognized that these lands were **"subject to any existing right, grant, lease or concession at the time of the inauguration of the Government established under this Constitution."** When the Commonwealth Government was established under the 1935 Constitution, spouses Carag had already an existing right to the subject land, including the disputed portion, pursuant to Decree No. 381928 issued in 1930 by the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Roco Kapunan Migallos Perez and Luna and Uy & Associates for private respondents.

DECISION

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 21 May 2001[2] and 25 September 2002[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 47965. The 21 May 2001 Resolution dismissed petitioner Republic of the Philippines' (petitioner) amended complaint for reversion, annulment of decree, cancellation and declaration of nullity of titles. The 25 September 2002 Resolution denied petitioner's motion for reconsideration.

The Facts

On 2 June 1930, the then Court of First Instance of Cagayan (trial court) issued Decree No. 381928[4] in favor of spouses Antonio Carag and Victoria Turingan (spouses Carag), predecessors-in-interest of private respondents Heirs of Antonio Carag and Victoria Turingan (private respondents), covering a parcel of land identified as Lot No. 2472, Cad. 151, containing an area of 7,047,673 square meters (subject property), situated in Tuguegarao, Cagayan. On 19 July 1938, pursuant to said Decree, the Register of Deeds of Cagayan issued Original Certificate of Title No. 11585[5] (OCT No. 11585) in the name of spouses Carag.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 40-45. Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole, concurring.

[3] *Id*. at 46-47. Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Romeo A. Brawner and Mercedes Gozo-Dadole, concurring.

[4] CA *rollo*, p. 8. The case was docketed as Cadastral Case No. 8, G.L.R.O. Record No. 437.

[5] *Id*. at 9.

On 2 July 1952, OCT No. 11585 was cancelled to discharge the encumbrance expressly stated in Decree No. 381928. Two transfer certificates of title were issued: Transfer Certificate of Title No. T-1277,[6] issued in the name of the Province of Cagayan, covering Lot 2472-B consisting of 100,000 square meters and Transfer Certificate of Title No. T-1278,[7] issued in the name of the private respondents, covering Lot 2472-A consisting of 6,997,921 square meters.

On 19 May 1994, Bienvenida Taguiam *Vda. De* Dayag and others filed with the Regional Office No. 2 of the Department of Environment and Natural Resources (DENR), Tuguegarao, Cagayan, a letter-petition requesting the DENR to initiate the filing of an action for the annulment of Decree No. 381928 on the ground that the trial court did not have jurisdiction to adjudicate a portion of the subject property which was allegedly still classified as timber land at the time of the issuance of Decree No. 381928.

The Regional Executive Director of the DENR created an investigating team to conduct ground verification and ocular inspection of the subject property.

The investigating team reported that:

A) The portion of Lot 2472 Cad-151 as shown in the Plan prepared for spouses Carag, and covered under LC Project 3-L of Tuguegarao, Cagayan, was found to be still within the timberland area at the time of the issuance of the Decree and O.C.T. of the spouses Antonio Carag and Victoria Turingan, and the same was only released as alienable and disposable on February 22, 1982, as certified by USEC Jose G. Solis of the NAMRIA on 27 May 1994.

B) Petitioner Bienvenida Taguiam *Vda. De* Dayag and others have possessed and occupied by themselves and thru their predecessors-in-interest the portion of Lot 2472 Cad-151, covered by LC Project 3-L of LC Map 2999, since time immemorial.[8]

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[6] *Id*. at 10-11.

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

[8] *Rollo*, p. 52.

Thus, the investigating team claimed that "a portion of Lot 2472 Cad-151" was "only released as alienable and disposable on 22 February 1982."

In a Memorandum dated 9 September 1996, the Legal Division of the Land Management Bureau recommended to the Director of Lands that an action for the cancellation of OCT No. 11585, as well as its derivative titles, be filed with the proper court. The Director of Lands approved the recommendation.

On 10 June 1998, **or 68 years after the issuance of Decree No. 381928**, petitioner filed with the Court of Appeals a complaint for annulment of judgment, cancellation and declaration of nullity of titles[9] on the ground that in 1930 the trial court had no jurisdiction to adjudicate a **portion** of the subject property, which portion consists of 2,640,000 square meters (disputed portion). The disputed portion was allegedly still classified as timber land at the time of issuance of Decree No. 381928 and, therefore, was not alienable and disposable until 22 February 1982 when the disputed portion was classified as alienable and disposable.

On 19 October 1998, private respondents filed a motion to dismiss.[10] Private respondents alleged that petitioner failed to comply with Rule 47 of the Rules of Court because the real ground for the complaint was mistake, not lack of jurisdiction, and that petitioner, as a party in the original proceedings, could have availed of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies but failed to do so. Private respondents added that petitioner did not attach to the complaint a certified true copy of the decision sought to be annulled. Private respondents also maintained that the complaint was barred by the doctrines of *res judicata* and law of the case and by Section 38 of Act No. 496.[11] Private respondents also stated that not all the heirs of spouses Carag were brought before

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[9] *Id*. at 48-54.

[10] *Id*. at 55-65.

[11] Section 38, Act No. 496 provides:

SEC. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper

the Court of Appeals for an effective resolution of the case. Finally, private respondents claimed that the real party in interest was not petitioner but a certain Alfonso Bassig, who had an ax to grind against private respondents.[12]

On 3 March 1999, petitioner filed an amended complaint for reversion, annulment of decree, cancellation and declaration of nullity of titles.[13]

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for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after the entry of the decree, provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided: *Provided, however*, That no decree or certificate of title issued to persons not parties to the appeal shall be cancelled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrance for value.

[12] The certification from the National Mapping and Resources Information Authority, attached by petitioner as Annex "F", stated that it was issued "upon the request of Atty. Janette B. Chua." LC Map 2465, attached by petitioner as Annex "G-1", also stated that it was issued "at the request of Atty. Janette Bassig Chua of Tuguegarao, Cagayan." Private respondents maintained that Atty. Chua is the daughter of Alfonso Bassig.

[13] *Rollo*, pp. 66-72. Petitioner only changed the title of the complaint from "annulment of judgment, cancellation and declaration of nullity of titles" to "reversion, annulment of decree, cancellation and declaration of nullity of titles."

The Ruling of the Court of Appeals

On 21 May 2001, the Court of Appeals dismissed the complaint because of lack of jurisdiction over the subject matter of the case. The Court of Appeals declared:

> The rule is clear that such judgments, final orders and resolutions in civil actions which this court may annul are those which the "ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available." The Amended Complaint contains no such allegations which are jurisdictional neither can such circumstances be divined from its allegations. Furthermore, such actions for Annulment may be based only on two (2) grounds: extrinsic fraud and lack of jurisdiction. Neither ground is alleged in the Amended Complaint which is for Reversion/ Annulment of Decree, Cancellation and Declaration of Nullity of Titles. It merely alleges that around 2,640,000 square meters of timberland area within Lot 2472 Cad. 151, had been erroneously included in the title of the Spouses Antonio Carag and Victoria Turingan under Decree No. 381928 and O.C.T. No. 11585 issued on June 2, 1930 and July 19, 1938, respectively; that hence, such adjudication and/or Decree and Title covering a timberland area is null and void *ab initio* under the provisions of the 1935, 1973 and 1987 Constitutions.
>
> Finally, it is clear that the issues raised in the Amended Complaint as well as those in the Motion to dismiss are factual in nature and should be threshed out in the proper trial court in accordance with Section 101 of the Public Land Act.[14] (Citations omitted)

Petitioner filed a motion for reconsideration. In its 25 September 2002 Resolution, the Court of Appeals denied the motion for reconsideration.

Hence, this petition.

The Issues

Petitioner raises the following issues:

1. Whether the allegations of the complaint clearly stated that the ordinary remedies of new trial, appeal, petition

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[14] *Id.* at 44-45.

for relief and other appropriate remedies are no longer available;

2. Whether the amended complaint clearly alleged the ground of lack of jurisdiction;

3. Whether the Court of Appeals may try the factual issues raised in the amended complaint and in the motion to dismiss;

4. Whether the then Court of First Instance of Cagayan had jurisdiction to adjudicate a tract of timberland in favor of respondent spouses Antonio Carag and Victoria Turingan;

5. Whether the fact that the Director of Lands was a party to the original proceedings changed the nature of the land and granted jurisdiction to the then Court of First Instance over the land;

6. Whether the doctrine of *res judicata* applies in this case; and

7. Whether Section 38 of Act No. 496 is applicable in this case.

The Ruling of the Court

While the Court of Appeals erred in dismissing the complaint on procedural grounds, we will still deny the petition because the complaint for annulment of decree has no merit.

Petitioner Complied with Rule 47 of the Rules of Court

First, the Court of Appeals ruled that petitioner failed to allege either of the grounds of extrinsic fraud or lack of jurisdiction in the complaint for annulment of decree.[15]

We find otherwise. In its complaint and amended complaint, petitioner stated:

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[15] RULES OF COURT, Section 2, Rule 47.

11. In view of the fact that in 1930 or in 1938, only the Executive Branch of the Government had the authority and power to declassify or reclassify land of the public domain, **the Court did not, therefore, have the power and authority to adjudicate in favor of the spouses Antonio Carag and Victoria Turingan the said tract of timberland, portion of the Lot 2472 Cad-151, at the time of the issuance of the Decree and the Original Certificate of Title of the said spouses**; and such adjudication and/or Decree and Title issued covering the timberland area is null and void *ab initio* considering the provisions of the 1935, 1973 and 1987 Philippine constitution.

x x x x x x x x x

15. The issuance of Decree No. 381928 and O.C.T. No. 11585 in the name of spouses Antonio Carag and Victoria Turingan, and all the derivative titles thereto in the name of the Heirs and said spouses, specifically with respect to the inclusion thereto of timberland area, by the then Court of First Instance (now the Regional Trial Court), and the Register of Deeds of Cagayan is patently illegal and erroneous for the reason that said **Court and/or the Register of Deeds of Cagayan did not have any authority or jurisdiction to decree or adjudicate the said timberland area of Lot 2472 Cad-151**, consequently, the same are null and void *ab initio*, and of no force and effect whatsoever.[16] (Emphasis supplied; citations omitted)

Petitioner clearly alleged in the complaint and amended complaint that it was seeking to annul Decree No. 381928 on the ground of the trial court's lack of jurisdiction over the subject land, specifically over the disputed portion, which petitioner maintained was classified as timber land and was not alienable and disposable.

Second, the Court of Appeals also dismissed the complaint on the ground of petitioner's failure to allege that the "ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available."

In *Ancheta v. Ancheta*,[17] we ruled:

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[16] *Rollo*, pp. 51-53, 69-71.

[17] 468 Phil. 900 (2004).

In a case where a petition for annulment of judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either 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.[18]

Since petitioner's complaint is grounded on lack of jurisdiction over the subject of the action, petitioner need not allege that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.

Third, the Court of Appeals ruled that the issues raised in petitioner's complaint were factual in nature and should be threshed out in the proper trial court in accordance with Section 101 of the Public Land Act.[19]

Section 6, Rule 47 of the Rules of Court provides:

SEC. 6. *Procedure*. — The procedure in ordinary civil cases shall be observed. Should a trial be necessary, the reception of evidence may be referred to a member of the court or a judge of a Regional Trial Court.

Therefore, the Court of Appeals may try the factual issues raised in the complaint for the complete and proper determination of the case.

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[18] *Id*. at 911.

[19] Section 101 of the Public Land Act provides:

SEC. 101. All actions for the reversion to the government of lands of the public domain, or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper court, in the name of the Republic of the Philippines.

However, instead of remanding the complaint to the Court of Appeals for further proceedings, we shall decide the case on the merits.

Complaint for Annulment of Decree Has No Merit

Petitioner contends that the trial court had no jurisdiction to adjudicate to spouses Carag the disputed portion of the subject property. Petitioner claims that the disputed portion was still classified as timber land, and thus not alienable and disposable, when Decree No. 381928 was issued in 1930. In effect, petitioner admits that the adjacent 4,407,673 square meters of the subject property, outside of the disputed portion, were alienable and disposable in 1930. Petitioner argues that in 1930 or in 1938, only the Executive Branch of the Government, not the trial courts, had the power to declassify or reclassify lands of the public domain.

Lack of jurisdiction, as a ground for annulment of judgment, refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[20] Jurisdiction over the subject matter is conferred by law and is determined by the statute in force at the time of the filing of the action.[21]

Under the Spanish regime, all Crown lands were per se alienable. In *Aldecoa v. Insular Government*,[22] we ruled:

> From the language of the foregoing provisions of law, it is deduced that, with the exception of those comprised within the mineral and timber zone, **all lands owned by the State or by the sovereign nation are public in character, and per se alienable** and, provided they are not destined to the use of the public in general or reserved by the Government in accordance with law, they may be acquired by any private or juridical person x x x[23] (Emphasis supplied)

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[20] *Republic v. "G" Holdings, Inc.*, G.R. No. 141241, 22 November 2005, 475 SCRA 608.

[21] *Erectors, Inc. v. NLRC*, 326 Phil. 640 (1996).

[22] 13 Phil. 159 (1909).

[23] *Id*. at 165-166.

Thus, unless specifically declared as mineral or forest zone, or reserved by the State for some public purpose in accordance with law, all Crown lands were deemed alienable.

In this case, petitioner has not alleged that the disputed portion had been declared as mineral or forest zone, or reserved for some public purpose in accordance with law, during the Spanish regime or thereafter. The land classification maps[24] petitioner attached to the complaint also do not show that in 1930 the disputed portion was part of the forest zone or reserved for some public purpose. The certification of the National Mapping and Resources Information Authority, dated 27 May 1994, contained no statement that the disputed portion was declared and classified as timber land.[25]

The law prevailing when Decree No. 381928 was issued in 1930 was Act No. 2874,[26] which provides:

> SECTION 6. The Governor-General, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into —
> (a) Alienable or disposable
> (b) Timber and
> (c) Mineral lands

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[24] CA *rollo*, pp. 16-18. Petitioner attached LC Map 2465 dated 22 June 1961 and LC Map 2999 dated 22 February 1982.

[25] *Id*. at 14. The certification from the National Mapping and Resources Information Authority signed by USEC Jose G. Solis stated:

> a. Area enclosed in red and marked 1 falls within Alienable or Disposable Block-I, LC Project No. 13 of the Provinces of Cagayan, Isabela and Mt. Province certified on February 27, 1923 per Map LC No. 30-C; and
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> b. Area enclosed in red and marked 2 falls within Alienable or Disposable Block, LC Project No. 3-L of Tuguegarao, Cagayan certified on February 22, 1982 per Map LC-2999.

[26] Entitled "An Act to Amend and Compile the Laws Relative to Lands of the Public Domain, and for Other Purposes" which took effect on 1 July 1919. Also known as "The Public Land Act."

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their government and disposition.

Petitioner has not alleged that the Governor-General had declared the disputed portion of the subject property timber or mineral land pursuant to Section 6 of Act No. 2874.

It is true that Section 8 of Act No. 2874 opens to disposition only those lands which have been declared alienable or disposable. Section 8 provides:

SECTION 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, not appropriated by the Government, **nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed,** or which, having been reserved or appropriated, have ceased to be so. However, the Governor-General may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reasons, suspend their concession or disposition by proclamation duly published or by Act of the Legislature. (Emphasis supplied)

However, Section 8 provides that lands which are already private lands, as well as lands on which a private claim may be made under any law, are not covered by the classification requirement in Section 8 for purposes of disposition. This exclusion in Section 8 recognizes that during the Spanish regime, Crown lands were **per se alienable** unless falling under timber or mineral zones, or otherwise reserved for some public purpose in accordance with law.

Clearly, with respect to lands excluded from the classification requirement in Section 8, trial courts had jurisdiction to adjudicate these lands to private parties. Petitioner has not alleged that the disputed portion had not become private property prior to the enactment of Act No. 2874. Neither has petitioner alleged that the disputed portion was not land on which a private right may be claimed under any existing law at that time.

In *Republic of the Philippines v. Court of Appeals*,[27] the Republic sought to annul the judgment of the Court of First Instance (CFI) of Rizal, sitting as a land registration court, because when the application for land registration was filed in 1927 the land was alleged to be unclassified forest land. The Republic also alleged that the CFI of Rizal had no jurisdiction to determine whether the land applied for was forest or agricultural land since the authority to classify lands was then vested in the Director of Lands as provided in Act Nos. 926[28] and 2874. The Court ruled:

We are inclined to agree with the respondent that it is legally doubtful if the authority of the Governor General to declare lands as alienable and disposable would apply to lands that have become private property or lands that have been impressed with a private right authorized and recognized by Act 2874 or any valid law. By express declaration of Section 45 (b) of Act 2874 which is quoted above, those who have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain under a bona fide claim of acquisition of ownership since July 26, 1894 may file an application with the Court of First Instance of the province where the land is located for confirmation of their claims and these applicants shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title. **When the land**

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[27] G.R. No. 127245, *En Banc* Resolution dated 30 January 2001.

[28] Entitled "An Act Prescribing Rules and Regulations Governing the Homesteading, Selling, and Leasing of Portions of the Public Domain of the Philippine Islands, Prescribing Terms and Conditions to Enable Persons to Perfect their Titles to Public Lands in said Islands, Providing for the Issuance of Patents Without Compensation to Certain Native Settlers upon the Public Lands, Providing for the Establishment of Town Sites and Sale of Lots therein, and Providing for the Determination by the Philippine Courts of Land Registration of all Proceedings for Completion of Imperfect Titles and for the Cancellation or Confirmation of Spanish Concessions and Grants in said Islands, as Authorized by Sections 13, 14, 15 and 62 of the Act of Congress of July 1, 1902, Entitled 'An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes'" which took effect on 7 October 1903. Also known as "The Public Land Act."

registration court issued a decision for the issuance of a decree which was the basis of an original certificate of title to the land, the court had already made a determination that the land was agricultural and that the applicant had proven that he was in open and exclusive possession of the subject land for the prescribed number of years. It was the land registration court which had the jurisdiction to determine whether the land applied for was agricultural, forest or timber taking into account the proof or evidence in each particular case. (Emphasis supplied)

As with this case, when the trial court issued the decision for the issuance of Decree No. 381928 in 1930, the trial court had jurisdiction to determine whether the subject property, including the disputed portion, applied for was agricultural, timber or mineral land. The trial court determined that the land was agricultural and that spouses Carag proved that they were entitled to the decree and a certificate of title. The government, which was a party in the original proceedings in the trial court as required by law, did not appeal the decision of the trial court declaring the subject land as agricultural. Since the trial court had jurisdiction over the subject matter of the action, its decision rendered in 1930, or 78 years ago, is now final and beyond review.

The finality of the trial court's decision is further recognized in Section 1, Article XII of the 1935 Constitution which provides:

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, **subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.** (Emphasis supplied)

Thus, even as the 1935 Constitution declared that all agricultural, timber and mineral lands of the public domain belong to the State, it recognized that these lands were **"subject to any existing right, grant, lease or concession at the time of the**

inauguration of the Government established under this Constitution."[29] When the Commonwealth Government was established under the 1935 Constitution, spouses Carag had already an existing right to the subject land, including the disputed portion, pursuant to Decree No. 381928 issued in 1930 by the trial court.

WHEREFORE, we *DENY* the petition. We *DISMISS* petitioner Republic of the Philippines' complaint for reversion, annulment of decree, cancellation and declaration of nullity of titles for lack of merit.

SO ORDERED.

Puno, C.J. (Chairperson), Austria-Martinez,[*] *Corona,* and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. No. 164648. August 6, 2008]

ERIC L. LEE, *petitioner, vs.* **HON. HENRY J. TROCINO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, SIXTH JUDICIAL REGION, BRANCH 62, BAGO CITY, THE OFFICE OF THE *EX OFFICIO* SHERIFF OF THE REGIONAL TRIAL COURT, SIXTH JUDICIAL REGION, BRANCH 62, BAGO CITY, and MAGDALENO M. PEÑA,** *respondents.*

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[29] CONSTITUTION (1935), Article XIII, Sec. 1.

[*] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PROMULGATION OF AMENDED DECISION DEEMED THE EARLIER VERDICT AUTOMATICALLY VACATED. —** When the appellate court promulgated the August 18, 2000 Amended Decision reversing the January 12, 2000 decision, it necessarily follows that the latter verdict was automatically deemed vacated. It ceased to exist in contemplation of law. As such, there is no more injunction to speak of, or order to desist from further execution, much less lift garnishments and levies already made.

2. **ID.; ID.; EXECUTION OF JUDGMENTS; DISCRETIONARY EXECUTION; STAYING THEREOF, WHEN PROPER. —** Under the Rules of Court, discretionary execution, like execution pending appeal, may be stayed only upon approval by the proper court of a sufficient supersedeas bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part.

3. **ID.; ID.; ID.; MOTION FOR EXECUTION FILED PENDING APPEAL; EFFECT; CASE AT BAR. —** Under the Rules of Court, in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time *and* the expiration of the time to appeal of the *other parties*, and not just the plaintiff's or defendant's. In the instant case, the trial court decision was issued on May 28, 1999. Peña filed the motion for execution pending appeal on June 8, 1999, or within the reglementary period to file his appeal. The trial court certainly still had jurisdiction over the case. Besides, prior to the transmittal of the original record or the record on appeal, the court may order execution pending appeal. Execution of a judgment may issue upon good reasons. Nor can we attribute a willful attempt by the trial court to delay the transmittal of the records of the case to the appellate court. When a motion for execution pending appeal is filed within the reglementary period for perfecting an appeal, the court must hear and resolve the motion for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, said jurisdiction continues until the matter is resolved and is not lost by the subsequent action of the opposing party.

4. ID.; ID.; ID.; ID.; IMPENDING INSOLVENCY OF ADVERSE PARTY IS GOOD GROUND FOR EXECUTION PENDING APPEAL; CASE AT BAR. – There is good ground to order execution pending appeal. Records show that on April 26, 2000, Urban Bank declared a bank holiday, and the Bangko Sentral ng Pilipinas (BSP) ordered its closure. Subsequently, Urban Bank was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC); five of its senior officials, including defendants (in the trial court) Borlongan and Bejasa, were placed in the hold-departure list of the Bureau of Immigration and Deportation pending investigation for alleged anomalous transactions (*e.g.* violation of the Single Borrower's Limit provision of Republic Act No. 8791, or the General Banking Law of 2000) and bank fraud which led to Urban Bank's financial collapse. Furthermore, several administrative, criminal and civil cases had been filed against Urban Bank officials, who are defendants in Civil Case No. 754. Also, in the *Peña* disbarment case, the Court found the existence of an agency relation between Peña and Urban Bank, thereby entitling the former to collection of fees for his services. Impending insolvency of the adverse party constitutes good ground for execution pending appeal.

5. ID.; ID.; ID.; EXECUTION PENDING APPEAL; SALE OF *PERSONAL PROPERTY* AT EXECUTION SALE; PURCHASER VESTED OWNERSHIP AND JUDGMENT DEBTOR HAS NO RIGHT OF REDEMPTION. – Barring any irregularity in the execution process in Civil Case No. 754, we find no cogent reason to allow the dismissal of Civil Case No. 1088, much less an indirect contempt charge against the respondents to prosper. By his own inaction, Lee failed to participate in the execution sale or to timely post a supersedeas bond to stay execution of the trial court's decision. This eleventh-hour attempt to salvage and correct that which has been caused by his own undoing, is in vain. Notwithstanding his victory in the appeal in CA-G.R. CV No. 65756, he could no longer recover the personal properties sold at execution sale, except only upon Peña's indemnity bond. Since there is no right to redeem personal property, the rights of ownership are vested to the purchaser at the foreclosure (or execution) sale and are not entangled in any suspensive condition that is implicit in a redemptive period. Upon the sale of personal

property on execution, all ownership and proprietary rights leave the judgment debtor and become vested in the purchaser, and the judgment debtor may no longer recover the same by redemption, to which he has no right.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Roberto Demigillo for Atty. M. M. Peña.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the March 19, 2004 Decision[1] and July 27, 2004 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 65023, dismissing the petition for indirect contempt filed against private respondent Magdaleno M. Peña as well as the petition for prohibition and *certiorari* instituted to enjoin the Regional Trial Court of Bago City, Branch 62, from further proceeding with Civil Case Nos. 754 and 1088.

On March 1, 1996, Peña filed before the Regional Trial Court of Bago City a complaint (docketed as Civil Case No. 754) for recovery of agent's compensation, expenses, damages and attorney's fees against Urban Bank, Inc. (Urban Bank), its board of directors and officers, namely: Teodoro Borlongan (Borlongan); Delfin Gonzales, Jr. (Gonzales); Benjamin de Leon (de Leon); Siervo Dizon; herein petitioner Eric Lee (Lee); Ben Lim, Jr.; Corazon Bejasa (Bejasa); and Arturo Manuel, Jr. On May 28, 1999, the Regional Trial Court of Bago City, Branch 62, rendered judgment in favor of Peña, as follows:

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[1] *Rollo*, pp. 62-74; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong.

[2] *Id*. at 78; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

WHEREFORE, premised from the foregoing, judgment is hereby rendered ordering the defendants to pay plaintiff jointly and severally the following amounts:

1. ₱24,000,000.00 as compensation for plaintiff's services plus the legal rate of interest from the time of demand until fully paid;

2. ₱3,000,000.00 as reimbursement of plaintiff's expenses;

3. ₱1,000,000.00 as and for attorney's fees;

4. ₱500,000 as exemplary damages;

5. Costs of suit.

SO ORDERED.[3]

On June 8, 1999, Peña moved for execution pending appeal while on June 15, 1999, Lee and his co-defendants filed a notice of appeal and an opposition to the motion for execution pending appeal.

The appeal from the trial court's decision was docketed as CA-G.R. CV No. 65756 in the Court of Appeals.

On October 29, 1999, the trial court issued a Special Order[4] granting the motion for execution pending Lee's appeal. On the same day, a Writ of Execution[5] was issued.

Thus, Lee and his co-defendants de Leon and Gonzales filed a Petition for *Certiorari* with the Court of Appeals (docketed as CA-G.R. SP No. 55667) which issued on November 9, 1999, a Temporary Restraining Order (TRO) enjoining the implementation of the October 29, 1999 Special Order and writ of execution. On January 12, 2000, the Court of Appeals rendered its Decision (in CA-G.R. SP No. 55667),[6] the dispositive portion of which reads, as follows:

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[3] CA *rollo*, Vol. I, p. 166; penned by Judge Edgardo L. Catilo.

[4] *Id*. at 167-176; penned by Judge Henry J. Trocino.

[5] *Id*. at 177-179.

[6] *Id*. at 59-71; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Godardo A. Jacinto and Edgardo P. Cruz.

WHEREFORE, the instant petition is GRANTED. The Special Order and writ of execution both dated October 29, 1999, are ANNULLED and SET ASIDE.

Respondents are directed to desist from further implementing the writ of execution and to lift the garnishment and levy made pursuant thereto.

SO ORDERED.[7]

Peña filed a motion for reconsideration which was granted. Thus, on August 18, 2000, the Court of Appeals rendered an Amended Decision,[8] the dispositive portion of which provides:

WHEREFORE, the motion for reconsideration of respondent Magdaleno M. Peña is GRANTED. Accordingly, this Court's decision dated January 12, 2000 is RECONSIDERED and SET ASIDE and another rendered DENYING the petition.

SO ORDERED.[9]

Lee, de Leon and Gonzales moved for reconsideration, but it was denied by the appellate court in its Resolution[10] dated October 19, 2000. The Court of Appeals also required Peña to post an indemnity bond in the amount of ₱15 million, thus:

WHEREFORE, petitioners' Motion for Reconsideration is DENIED for lack of merit, while the Supplemental Motions for Reconsideration are DENIED for being filed out of time and for lack of merit.

Respondent Magdaleno M. Peña is directed to post, within five (5) days from notice, an indemnity bond in the amount of ₱15,000,000.00 to answer for the damages which petitioners may suffer in case of reversal on appeal of the trial court's decision.

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[7] *Id*. at 70.

[8] *Id*. at 73-84; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Godardo A. Jacinto and Roberto A. Barrios.

[9] *Id*. at 83.

[10] *Id*. at 86-89.

Finally, the Office of the *Ex-Officio* Sheriff of the Regional Trial Court, Sixth Judicial Region (Branch 62, Bago City), is directed to furnish this Court, within five (5) days from notice, with copies of the returns of its proceedings on the execution pending appeal of the trial court's decision, together with copies of the corresponding notices of levy/garnishment and execution sales, certificates of sale and other pertinent documents.

SO ORDERED.[11]

On October 31, 2000, however, the Court of Appeals issued a Resolution[12] staying the execution of the trial court's Decision dated May 28, 1999 conditioned upon posting a supersedeas bond in the amount of ₱40 million.

Peña moved for reconsideration which was denied in a Resolution[13] dated December 8, 2000, thus:

WHEREFORE, respondent Magdaleno M. Peña's Motion for Reconsideration and Supplemental Motions are DENIED for lack of merit, while his motions for extension of time to file an indemnity bond are GRANTED in that he is given an extension expiring on December 11, 2000 within which to post an indemnity bond in favor of petitioners.

The supersedeas bond (PGA Bond No. HO-63671-200) dated October 27, 2000 in the sum of Forty Million Pesos (₱40,000,000.00) posted by Prudential Guarantee and Assurance Corporation, with petitioners Benjamin L. de Leon, Delfin C. Gonzalez, Jr. and Eric L. Lee as principals, is APPROVED. Accordingly, execution pending appeal of the trial court's judgment against said petitioners is STAYED.

SO ORDERED.[14]

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[11] *Id*. at 89.

[12] *Id*. at 37-38; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Bienvenido L. Reyes and Roberto A. Barrios.

[13] *Id*. at 40-44; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Godardo A. Jacinto and Roberto A. Barrios.

[14] *Id*. at 44.

Previously, or sometime in 1999 and 2000, Peña, pursuant to the Special Order and Writ of Execution, had caused the levy and sale by public auction of some of Urban Bank and its co-defendants' properties, including the shares of stock of Lee in EQL Properties, Inc. (EQLPI). Peña then sought to transfer Lee's shares in his (Peña's) name, but the EQLPI Corporate Secretary refused to act on the request. Thus, on March 28, 2001, Peña filed an action (docketed as Civil Case No. 1088) with the same court[15] (Branch 62 of the Regional Trial Court of Bago City) to compel EQLPI to transfer Lee's shares in Peña's name and recognize his ownership and interest therein.

Claiming that Civil Case No. 1088 was filed to enforce the Special Order and Writ of Execution which were covered by the Stay Order, Lee moved to dismiss the same, but the trial court denied the motion. Instead of filing an Answer, Lee filed with the Court of Appeals a special civil action (docketed as CA-G.R. SP No. 65023), for indirect contempt against Peña and the sheriff for alleged contumacious disobedience to the lawful order of the appellate court in CA-G.R. SP No. 55667, and a petition for prohibition and *certiorari* against all the herein respondents to annul and set aside the proceedings in Civil Case No. 1088, and to prohibit the trial court, in Civil Case No. 754, from further proceeding with the implementation of the Special Order and the Writ of Execution.

Incidentally, on December 7, 2000, or prior to the filing of CA-G.R. SP No. 65023 before the Court of Appeals on June 5, 2001, Lee and his co-defendants Delfin Gonzales, Jr. and Benjamin de Leon, had filed a Petition for Review (docketed as G.R. No. 145822) with this Court.[16] Citing the pendency of CA-G.R. SP No. 65023, and claiming that the subject matter and reliefs sought therein are the same as those in G.R. No. 145822, Peña moved to dismiss the said petition (G.R. No. 145822) on the ground of forum-shopping. However, in a Resolution[17]

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[15] Entitled "*Magdaleno Peña v. EQL Properties, Inc., Eric Lee, et al.*"

[16] Entitled "*Delfin Gonzales, Jr. v. Magdaleno Peña.*"

[17] *Rollo*, pp. 369-370.

dated September 24, 2003, the Court's Second Division denied the motion.

Meanwhile, as a result of the levy and sale at auction of Lee's personal properties,[18] Peña moved (in Branch 62) for the cancellation and transfer of some of these properties in his name and in that of his assignees.[19] Previous orders of the trial court (dated September 1, 2000 and December 4, 2000) likewise directing the cancellation and transfer of the stock certificates went unheeded, specifically with respect to Lee's Manila Polo Club, Inc. and Tagaytay Highlands International Golf Club, Inc. shares of stock. The trial court, acting upon Peña's motion, issued on December 19, 2000 another Order[20] directing Manila Polo Club, Inc. and Tagaytay Highlands International Golf Club, Inc. to transfer Lee's shares in Peña's name and in that of his assignees.

On January 3, 2001, the trial court issued an Order[21] directing the Manila Golf and Country Club, Inc., under pain of contempt, to comply with the court's Orders dated October 4, 2000 and December 20, 2000 ordering the Corporate Secretary thereof to cancel Stock Certificate No. 2395 in the name of Lee and to transfer the same in the name of Sylvia Ting, who appears to be the successful bidder in the execution sale of said Manila Golf share.

On March 9, 2001, the trial court issued an Order[22] reiterating its previous directives to Manila Polo Club, Inc.

On December 13, 2000, the trial court issued an Amended Order[23] disposing thus:

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[18] Which, apart from EQLPI shares, consisted of shares of stock in Manila Polo Club, Manila Golf and Country Club, Sta. Elena Golf and Country Club and Tagaytay Highlands International Golf Club.

[19] *Rollo*, pp. 193-195.

[20] *Id*., penned by Judge Henry J. Trocino.

[21] *Id*. at 196-198; penned by Judge Henry J. Trocino.

[22] *Id*. at 199-202.

[23] *Id*. at 189-192.

WHEREFORE, the dispositive portions of the orders of this court dated October 31, 2000 are hereby amended. Thus, the respective corporate secretaries, namely: Christine Q. Lee of EQL Properties, Inc., Roseanne I. Gonzalez of D.C. Gonzalez, Inc. and Atty. Candido R. Flor of Subic Yacht Club is ordered as follows:

(A) To cancel the stock certificates covering the shares described in the orders dated October 31, 2000, in the names of Delfin C. Gonzalez, Jr., Eric L. Lee and Teodoro C. Borlongan, and to effect the transfer of said shares of stocks in the names of the following purchasers at the public auction sale conducted on October 30, 2000, to wit:

ATTY. MAGDALENO M. PEÑA

a. One (1) share of stock in the name of Teodoro C. Borlongan in Subic Bay Yacht Club;

b. 30,585 shares of stocks in D.C. Gonzalez, Jr., Inc. at ₱20.00 per share in the name of Delfin C. Gonzalez, Jr.;

c. 60,757 shares of stocks in EQL Properties, Inc. at ₱20.00 per share in the name of Eric Q. Lee.

MR. RAMON P. EREÑETA

a. Ten (10) shares of stocks in D.C. Gonzalez, Jr., Inc. at ₱50.00 per share in the name of Delfin C. Gonzalez, Jr.;

b. Ten (10) shares of stocks in EQL Properties, Inc. at ₱50.00 per share in the name of Eric Q. Lee;

MR. ROBERTO A. DEMIGILLO

a. Ten (10) shares of stocks in D.C. Gonzalez, Jr., Inc. at ₱50.00 per share in the name of Delfin C. Gonzalez, Jr.;

b. Ten (10) shares of stocks in EQL Properties, Inc. at ₱50.00 per share in the name of Eric Q. Lee;

MR. NOEL M. MALAYA

a. Ten (10) shares of stocks in EQL Properties, Inc. at ₱50.00 per share in the name of Eric Q. Lee;

b. Ten (10) shares of stocks in D.C. Gonzalez, Jr., Inc. at ₱50.00 per share in the name of Delfin C. Gonzalez, Jr.;

MR. DEMETRIO M. VINSON, JR.

a. Ten (10) shares of stocks in EQL Properties, Inc. at ₱50.00 per share in the name of Eric Q. Lee;

b. Ten (10) shares of stocks in D.C. Gonzalez, Jr., Inc. at ₱50.00 per share in the name of Delfin C. Gonzalez, Jr.;

(B) To supply and provide the said purchasers thru their counsel within three (3) days from receipt of this order the following data: stock certificate number, if any, date of acquisition of the shares; cost of acquisition; and transfer fees paid, if any, for each share; and

(C) To inform this court in writing within ten (10) days from notice of compliance with (A) and (B) above, and to show to the Clerk of Court of this Court the corresponding Stock and Transfer Book reflecting the cancellation and transfer of aforesaid, within the same period.

SO ORDERED.[24]

On November 6, 2003, a Decision[25] was rendered by the Court of Appeals in CA-G.R. SP No. 72698[26] and CA-G.R. CV No. 65756,[27] declaring the absence of an agency relationship

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[24] *Id*. at 190-192.

[25] *Id*. at 383-412; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid.

[26] Appeal from the May 28, 1999 Decision as well as the October 29, 1999 Special Order of the Regional Trial Court of Bago City, Branch 62 in Civil Case No. 754 for recovery of agent's commission and expenses, damages and attorney's fees; entitled "*Magdaleno M. Peña v. Urban Bank, Inc., Atty. Manuel R. Singson, Atty. Allan B. Gepty, Teodoro C. Borlongan, Corazon C. Bejasa, Arturo Manuel, Jr., Ben Y. Lim, Jr., P. Siervo H. Dizon, Atty. Gilbert T. Reyes, Atty. Jaime G. Hofileña, Atty. Nick Emmanuel C. Villaluz, Benjamin L. De Leon, Delfin C. Gonzalez, Jr., Eric L. Lee, Atty. Luis A. Verz Cruz, Atty. Leland R. Villadolid, Jr., Atty. Gilbert D. Gallos, and Atty. Remegio Michael A. Ancheta II.*"

[27] Petition for Indirect Contempt filed by Peña entitled "*Magdaleno M. Peña v. Urban Bank, Inc., Benjamin L. De Leon, Delfin C. Gonzalez, Jr., Eric L. Lee, Teodoro C. Borlongan, Corazon M. Bejasa, Arturo Manuel, Jr., Ben Y. Lim, Jr., and Siervo P. Hizon.*"

between Urban Bank and Peña, and finding no sufficient basis to hold the respondents therein in contempt of court, thus:

> WHEREFORE, in view of the foregoing considerations, the May 28, 2000[28] decision and the October 19, 2000[29] Special Order of the RTC of Bago City, Branch 62, are hereby ANNULLED AND SET ASIDE. However, the plaintiff-appellee in CA GR CV NO. 65756 is awarded the amount of ₱3 Million as reimbursement for his expenses as well as reasonable compensation for his efforts in clearing Urban Bank's property of unlawful occupants. The award of exemplary damages, attorney's fees and costs of suit are deleted, the same not having been sufficiently proven. The petition for Indirect Contempt against all the respondents is DISMISSED for utter lack of merit.
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> SO ORDERED.[30]

On March 19, 2004, the Court of Appeals issued its now assailed Decision dismissing Lee's twin petitions in CA-G.R. SP No. 65023.[31] The appellate court held that both (petitions in CA-G.R. SP No. 65023 and in G.R. No. 145822) pray for the same relief, which is to enjoin the implementation of the Special Order and the Writ of Execution, and set aside the levies, garnishments and auction sales conducted pursuant thereto; the parties to said petitions, causes of action and reliefs sought are substantially the same; and Lee's twin petitions violate the rule against forum-shopping and the principle of *litis pendentia*.

Lee filed a motion for reconsideration but it was denied; hence the instant petition raising the following assignment of errors:

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[28] Should read as May 28, 1999.

[29] Should read as October 29, 1999.

[30] *Rollo*, p. 411.

[31] For Indirect Contempt for alleged contumacious disobedience to the lawful order of the Court of Appeals in CA-G.R. SP No. 55667 and for Prohibition and *Certiorari* to prohibit respondent Judge from further proceeding in Civil Case Nos. 754 and 1088 relative to the alleged premature implementation of the execution pending appeal and despite the stay order of the Court of Appeals.

THE COURT OF APPEALS GRAVELY ERRED IN:

1) RULING THAT THE PETITIONER ENGAGED IN FORUM-SHOPPING;

2) FAILING TO CITE RESPONDENTS FOR INDIRECT CONTEMPT FOR WILLFUL AND CONTUMACIOUS VIOLATIONS OF THE INJUNCTIVE STAY ORDERS OF THE COURT OF APPEALS IN CA G.R. SP 55667;

3) FAILING TO ANNUL THE CONTUMACIOUS ACTS OF EXECUTION BY RESPONDENT JUDGE AND RESPONDENT SHERIFF; AND

4) FAILING TO PROHIBIT RESPONDENT JUDGE AND RESPONDENT SHERIFF FROM PROCEEDING WITH THE ACTS OF EXECUTION THAT VIOLATED THE INJUNCTIVE AND STAY ORDERS OF THE COURT OF APPEALS.[32]

Sometime in 2000, Urban Bank filed a disbarment suit[33] against Peña. In its complaint, the bank cited the following material facts, which shed factual light upon the instant case:

3. Last 1 December 1994, Complainant (Urban Bank) bought a parcel of land located along Roxas Boulevard from the Isabela Sugar Company ("ISC" for brevity). One of the conditions of the sale was for ISC to cause the eviction of all the occupants found in said property. This condition was incorporated in the Contract to Sell and adopted in the subsequent Deed of Absolute Sale executed by and between ISC and Complainant dated 15 November 1994 and 29 Novemebr 1994, respectively.

4. To fully implement the abovementioned condition, ISC engaged the services of herein Respondent Atty. Magdaleno M. Peña. This was communicated by ISC to Respondent in a Memorandum dated 20 November 1994 and relayed to Complainant in a Letter dated 19 December 1994.

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[32] *Rollo*, p. 28.

[33] *Urban Bank, Inc. v. Peña*, A.C. No. 4863, September 7, 2001, 364 SCRA 597; penned by now Chief Justice Reynato S. Puno and concurred in by then Chief Justice Hilario G. Davide, Jr. and Associate Justices Santiago M. Kapunan, Bernardo P. Pardo and Consuelo Ynares-Santiago.

5. Respondent accepted the engagement of his services by ISC and he proceeded to take the necessary steps to evict the occupants of the property subject of the sale.

6. During the eviction process, Complainant was informed by ISC and Respondent about the necessity of a letter of authority in favor of the latter, granting him the authority to represent Complainant in maintaining possession of the aforesaid property and to represent Complainant in any court action that may be instituted in connection with the exercise of said duty.

7. Complainant acceded to the request and issued a letter-authority dated 15 December 1994, but only after making it very clear to the Respondent that it was ISC which contracted his services and not Complainant. This clarification was communicated to Respondent by Atty. Corazon M. Bejasa and Mr. Arturo E. Manuel, Jr., Senior Vice-President and Vice-President, respectively of Complainant bank in a letter addressed to respondent dated 15 December 1994. A copy of said letter is attached hereto and made an integral part of this Complaint as Annex "E".

8. Subsequently however, Respondent requested for a modification of said letter of authority by furnishing Complainant with a draft containing the desired wordings (including the date, *i.e.*, 19 December 1994) and asking Complainant to modify the previous letter by issuing a new one similarly worded as his draft. A copy of said request is attached hereto and made an integral part of this Complaint as Annex "F".

9. If only to expedite and facilitate matters, Complainant willingly obliged and re-issued a new letter of authority to Respondent, this time incorporating some of Respondent's suggestions. Thus it came to pass that the actual letter of authority was dated 19 December 1994, while Complainant's clarificatory letter was dated 15 December 1994.

10. Eventually, the eviction of the occupants of the property in question was successfully carried out. After the lapse of more than thirteen (13) months, Respondent filed a collection suit against herein Complainant and its senior officers "for recovery of agent's compensation and expenses, damages and attorney's fees", on the strength of the letter of authority issued by Atty. Bejasa and Mr. Manuel, Jr. A copy of the complaint filed by herein Respondent with the Bago City Regional Trial Court is attached hereto and made an integral part hereof as Annex "G".

11. The act of Respondent in securing the letter of authority from Complainant, ostensibly for the purpose of convincing the occupants sought to be evicted that he was duly authorized to take possession of the property and then using the same letter as basis for claiming agent's compensation, expenses and attorney's fees from Complainant, knowing fully well the circumstances surrounding the issuance of said letter of authority, constitutes deceit, malpractice and gross misconduct under Section 27, Rule 138 of the Revised Rules of Court. Said provision enumerates the grounds for the suspension and disbarment of lawyers, namely:

> Sec. 27. Attorneys removed or suspended by Supreme Court, on what grounds, — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath of which he is required to take before admission to practice, or for willful disobedience of any lawful order of a superior court or for corruptly or wilfully appearing as an attorney for a party to a case without any authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.[34]

Peña, in his Comment to the disbarment complaint, alleged that Urban Bank,

through its duly authorized officers, engaged his services to rid the property of tenants and intruders in the course of a telephone conversation. He added that there was no reason for him to deceive complainant into writing a letter of authority because he knew very well that the verbal agreement was sufficient to constitute an attorney-client relationship. The request for a letter of authority, according to him, was "merely to formalize the engagement." Lastly, he argued that the complainant accepted the benefits of his service, just as it never disclaimed that he was acting in its behalf during the period of engagement.[35]

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[34] *Id.* at 598-600.

[35] *Id.* at 600.

The Commission on Bar Discipline of the IBP made the following findings of fact and recommendation, which was adopted by the Court, to wit:

[T]he complainant (plaintiff) in RTC Bago City Civil Case is the respondent in the present case which only showed that to get even with the respondent, complainant instituted the present case as leverage for respondent's complaint in the civil case. The complainant in the RTC Bago City Civil case is the respondent in the present case and vice-versa; therefore there was no institution by the same party for remedies in different fora which negates forum shopping.

The fact remains however that complainant never contested the actuations done by the respondent to rid its property from tenants and intruders; and even executed a letter of authority in favor of respondent dated December 19, 1994; otherwise complainant should have engaged the services of other lawyers.

Nevertheless, it is not for this Office to determine who should pay the respondent for this is a matter not within its jurisdiction but for the proper court to do so.

The only issue for resolution of this Office is whether or not respondent committed malpractice, deceit and gross misconduct in the practice of his profession as member of the bar.

The evidence on record showed that respondent successfully performed his task of evicting the tenants and intruders in the property in question. More so, no less than Senior Vice-President Corazon Bejasa was very thankful for his job well done.

Complainant benefited from respondent's task and for a period of fifty (50) days no behest or complaint was received by the respondent from the complainant. It was only when payment for his legal services was demanded that complainant re-acted when it is incumbent upon the benefactor of services that just compensation should be awarded.

It is but just and proper that if refusal to pay just compensation ensues in any transaction, the proper remedy is to institute an action before the proper court and such actuation of the respondent herein did not constitute deceit, malpractice or gross misconduct.

In view of the foregoing, the Undersigned hereby recommends that the complaint against Atty. Magdaleno Peña be dismissed for lack of merit.[36]

Based on the foregoing findings and recommendation, the Court dismissed the disbarment case, thus:

From the record and evidence before us, we agree with the commissioner's conclusion that respondent cannot be found guilty of the charges against him. Apart from the allegations it made in various pleadings, complainant has not proferred any proof tending to show that respondent really induced it, through machination or other deceitful means, to issue the December 19 letter of authority ostensibly for the purpose of evicting illegal occupants, then using the very same letter for demanding agent's compensation. During the scheduled hearing, it did not introduce a single witness to testify apropos the circumstance under which the letter was dispatched. Those who signed and issued the letter, Corazon M. Bejasa and Arturo E. Manuel Jr., were never presented before the investigating commissioner to substantiate its assertion that the letter it gave to the respondent was only "for show," and for a purpose which is limited in scope. Similarly, not even the sworn statements from these or other vital witnesses were attached to the memorandum or the other pleadings it submitted. It is one thing to allege deceit, malpractice and gross misconduct, and another to demonstrate by evidence the specific acts constituting the same.

To be sure, no evidence in respect of the supposed deceit, malpractice or gross misconduct was adduced by the complainant. It is axiomatic that he who alleges the same has the onus of validating it. In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence. In this regard, we find that complainant failed to meet the required standard.

In an effort to lend credence to its claim that there was no contractual relation between them, complainant attempted to establish that the legal services of the respondent was engaged, not by it, but by the seller of the lot, Isabela Sugar Company. This should presumably settle any doubt that the December 19 letter was only to be used by respondent for the purpose of supervising the eviction of the occupants

[36] *Id*. at 601.

of the property and protecting it from intruders, and nothing more. To support this, it submitted correspondence coming from people who appear to be responsible officers of ISC (one from Enrique Montilla III, and another from Julie Abad and Herman Ponce) informing respondent of the engagement of his services by the ISC. These letters, though, cannot by themselves be accorded strong probative weight in the face of respondent's emphatic assertion that he has never seen any of these documents. Likewise, they do not indicate that copies thereof were received by him or by any authorized person in his behalf. It bears stressing that they do not carry his signature, nor the time or date he took possession of them. It follows that they cannot be used to bind and prejudice the respondent absent any showing that he had actual and ample knowledge of their contents.

Lastly, complainant seems to belabor under the mistaken assumption that the basis of the respondent in instituting the civil case against it was the December 19 letter of authority. Well to point out, the suit was grounded on an oral contract of agency purportedly entered into between him and the complainant, represented by its duly authorized officers. This is evident from the averments embodied in the Complaint filed with the Bago City Trial Court x x x.

It is clear from the above that what respondent was trying to enforce were the terms and conditions of the contract. The letter, from his own admission, just served to officially confirm a done deal. It was, hence, utilized solely as documentary evidence to buttress respondent's assertion regarding the existence of the agency agreement. In fact, the amount of compensation (to the tune of 10% of the market value of the property) he was recovering in the action was never mentioned in the letter, but apparently settled in the course of an oral conversation. Indeed, respondent, with or without the letter, could have instituted a suit against the complainant. There is no gainsaying that a verbal engagement is sufficient to create an attorney-client relationship.

In sum, we find that, under the premises, respondent can hardly be faulted and accused of deceit, malpractice and gross misconduct for invoking the aid of the court in recovering recompense for legal services which he claims he undertook for the complainant, and which the latter does not deny to have benefited from. Indeed, what he did was a lawful exercise of a right.[37] (Emphasis supplied)

[37] *Id*. at 602-605.

From the above decision in the disbarment case, the Court accordingly found the existence of an attorney-client relationship between Peña and Urban Bank, giving ground to the former to collect fees on account of services he rendered in an ejectment case. It is precisely upon this argument that Peña had initiated Civil Case No. 754 for the recovery of compensation for his legal services. Civil Case No. 1088, on the other hand, is an offshoot of the enforcement of the trial court's award in Civil Case No. 754.

In his first assignment of error, Lee denies engaging in forum-shopping when he filed CA-G.R. SP No. 65023 during the pendency of G.R. No. 145822, citing the Court's Resolution of September 24, 2003 which denied Peña's motion to dismiss the petition in G.R. No. 145822.

Lee also contends that in view of the injunctive pronouncement in the dispositive portion of the January 12, 2000 Decision of the Court of Appeals (in CA-G.R. SP No. 55667), to wit:

> WHEREFORE, the instant petition is GRANTED. The Special Order and Writ of Execution both dated October 29, 1999 are ANNULLED and SET ASIDE.
>
> **Respondents are directed to desist from further implementing the Writ of Execution and to lift the garnishment and levy made pursuant thereto**.
>
> SO ORDERED. (Emphasis supplied)

private respondent Peña and the sheriff of Bago City Regional Trial Court, Branch 62, committed indirect contempt in proceeding with the 1999 and 2000 garnishment, levy and auction sales of Lee and his co-defendants' properties. Lee argues that the sheriff and Peña —

> engaged in a pattern of disobedience calculated to defy, circumvent, evade, resist and render futile and ineffective the injunctive and stay orders of the Court of Appeals in CA-G.R. SP No. 55667.[38]

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[38] *Rollo*, p. 34.

Lee claims that the October 31, 2000 Stay Order of the Court of Appeals subsisted at the time of the levy and sale on execution; that under Section 4, Rule 39 of the Rules of Court, the injunction contained in the January 12, 2000 Decision was immediately executory and by it, the trial court was decreed to enjoin further execution or implementation of the Special Order and Writ of Execution "effective continuously from November 9, 1999 up to the present."[39]

Furthermore, Lee insists that the Amended Decision (which set aside the January 12, 2000 Decision) has not achieved finality on account of the timely filing of his motion for reconsideration; thus the January 12, 2000 Decision remained valid and effective, and the trial court, sheriff and Peña were enjoined from further implementing the Writ of Execution.

Finally, Lee argues that the appellate court committed grave error in its failure to annul and prohibit the "acts of execution" already carried out.

In the main, Lee would have this Court, in Civil Case No. 754, enjoin, annul and set aside the entire execution process, as well as declare respondents guilty of indirect contempt for proceeding with the levy and execution sale of his personal properties in violation of the Stay Order. In Civil Case No. 1088, he claims that EQLPI cannot be compelled to transfer his (Lee's) share to Peña's name due to the nullity of the execution process in Civil Case No. 754. Verily, a resolution of the issues raised in Civil Case No. 754 will affect the resolution of the issues raised in Civil Case No. 1088.

On the issue of forum-shopping, we find that the appellate court disregarded our ruling in G.R. No. 145822, given the denial therein of Peña's motion to dismiss on precisely that ground. The Court has ruled before on this issue; it should now be considered settled.

We find no merit in the rest of Lee's assigned errors.

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[39] *Id.* at 37.

When the appellate court promulgated the August 18, 2000 Amended Decision reversing the January 12, 2000 decision, it necessarily follows that the latter verdict was automatically deemed vacated. It ceased to exist in contemplation of law.[40] As such, there is no more injunction to speak of, or order to desist from further execution, much less lift garnishments and levies already made.

The Amended Decision effectively reinstated the trial court's Special Order allowing execution pending appeal. Consequently, there is no merit in Lee's insistence that the injunction of such execution pending appeal continues (under the January 12, 2000 Decision), for it diametrically opposes the Amended Decision's grant of the same. When the Amended Decision was issued, it effectively superseded the January 12, 2000 Decision, vacating the latter in its entirety.

Likewise, Lee's argument that the January 12, 2000 Decision was immediately executory and the trial court was thus directed to enjoin further implementation of the Special Order and Writ of Execution "effective continuously from November 9, 1999 up to the present" is erroneous. Stay of execution proceeds only from December 8, 2000, which is the date of the appellate court's approval of the ₱40 million supersedeas bond posted by Lee and his co-petitioners. Prior thereto, all executions, garnishments and levies of Lee's properties proceeding from the Special Order and the Writ of Execution are presumed regular, for they have not been legally stayed, except for a brief ninety (90) day period during which the TRO remained in force,[41] and at which point in time the record does not demonstrate that execution, levy, garnishment or sale of his properties were made.[42]

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[40] *Imperial v. De la Cruz*, 153 Phil. 697 (1973).

[41] The TRO was issued on November 9, 1999, but it has not been shown when a copy of the same was received by the trial court, the sheriff or Peña.

[42] *Id.*; *rollo*, p. 452. From November 10, 1999 until August 30, 2000, or during the effectivity of the TRO and the January 12, 2000 Decision of the CA, no execution of the trial court judgment in any manner was effected. The Amended Decision was issued on August 18, 2000. Execution sales were conducted only beginning August 31, 2000 and ended on October 30, 2000.

Under the Rules of Court, discretionary execution, like execution pending appeal, may be stayed only upon approval by the proper court of a sufficient supersedeas bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part.[43]

Lee's contention, that the filing and pendency of the Motion for Reconsideration of the Amended Decision, has the effect of staying the enforcement of the same,[44] thereby *reinstating* the injunction aspect of the January 12, 2000 Decision, lacks merit. If Lee's argument were to be sustained, this would result to an absurd situation whereby an injunction, contained in a judgment that has been set aside in its entirety, could be enforced by the simple expedient of filing a motion for reconsideration.[45]

There is likewise no merit in Lee's claim that the trial court had no jurisdiction to issue the Special Order allowing execution pending appeal and the Writ of Execution since it had already lost jurisdiction over the case upon the perfection of his (Lee's) appeal. Under the Rules of Court, in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time *and* the expiration of the time to appeal of the *other parties*,[46] and not just the plaintiff's or defendant's.

In the instant case, the trial court decision was issued on May 28, 1999. Peña filed the motion for execution pending appeal on June 8, 1999, or within the reglementary period to file his appeal. The trial court certainly still had jurisdiction over the case. Besides, prior to the transmittal of the original record or the record on appeal, the court may order execution

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[43] RULES OF COURT, Rule 39, Sec. 3.

[44] *Rollo*, p. 22.

[45] *Id*. at 425.

[46] RULES OF COURT, Rule 41, Sec. 9, par. (3).

pending appeal.[47] Execution of a judgment may issue upon good reasons.[48]

Nor can we attribute a willful attempt by the trial court to delay the transmittal of the records of the case to the appellate court. When a motion for execution pending appeal is filed within the reglementary period for perfecting an appeal, the court must hear and resolve the motion for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, said jurisdiction continues until the matter is resolved and is not lost by the subsequent action of the opposing party.[49]

Petitioner Lee's claim that since the sheriff's return of November 15, 1999 stated that the Writ of Execution had been "duly implemented," which means that the judgment had been satisfied in full, thereby prohibiting further execution of the judgment is without merit. The phrase simply means that the writ had been implemented, not necessarily that judgment had been satisfied in full.

When Lee seeks the annulment and setting aside of the levy and sale on execution of his personal properties in Civil Case No. 754 in his petition in CA-G.R. SP No. 65023, he has placed the entire execution process under review by this Court, and necessarily so, since we cannot determine the propriety of the pendency of Civil Case No. 1088 without settling the execution issue in Civil Case No. 754. In other words, we cannot allow Civil Case No. 1088 to proceed if the execution process in Civil Case No. 754 were to be invalidated.

We agree with the appellate court's ratiocination in CA-G.R. SP No. 55667 that there is good ground to order execution pending appeal. Records show that on April 26, 2000, Urban Bank declared a bank holiday, and the Bangko Sentral ng Pilipinas

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[47] *Id.*; Sec. 9, last par.

[48] *Id.*, Rule 39, Sec. 2.

[49] *Cebu Contractors Consortium Company v. Court of Appeals*, G.R. No. 98046, December 14, 1992, 216 SCRA 597, 601.

(BSP) ordered its closure. Subsequently, Urban Bank was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC); five of its senior officials, including defendants (in the trial court) Borlongan and Bejasa, were placed in the hold-departure list of the Bureau of Immigration and Deportation pending investigation for alleged anomalous transactions (*e.g.* violation of the Single Borrower's Limit provision of Republic Act No. 8791, or the General Banking Law of 2000) and bank fraud which led to Urban Bank's financial collapse.[50] Furthermore, several administrative, criminal and civil cases had been filed against Urban Bank officials, who are defendants in Civil Case No. 754. Also, in the *Peña* disbarment case, the Court found the existence of an agency relation between Peña and Urban Bank, thereby entitling the former to collection of fees for his services. Impending insolvency of the adverse party constitutes good ground for execution pending appeal.[51]

Barring any irregularity in the execution process in Civil Case No. 754, we find no cogent reason to allow the dismissal of Civil Case No. 1088, much less an indirect contempt charge against the respondents to prosper. By his own inaction, Lee failed to participate in the execution sale or to timely post a supersedeas bond to stay execution of the trial court's decision. This eleventh-hour attempt to salvage and correct that which has been caused by his own undoing, is in vain. Notwithstanding his victory in the appeal in CA-G.R. CV No. 65756,[52] he could no longer recover the personal properties sold at execution sale, except only upon Peña's indemnity bond. Since there is no right to redeem personal property, the rights of ownership are vested to the purchaser at the foreclosure (or execution) sale

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[50] *Rollo*, pp. 156-157.

[51] *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431.

[52] The decision in CA-G.R. CV No. 65756 (November 6, 2003) failed to take into account our pronouncement in *Urban Bank, Inc. v. Peña* (September 7, 2001), where we found the existence of an attorney-client relationship between Urban Bank and Peña, albeit the matter of who is obligated to pay the latter was left unresolved.

and are not entangled in any suspensive condition that is implicit in a redemptive period.[53]

Nowhere is the foregoing more evident than in Lee's Reply to Peña's Comment,[54] where the former seems to impress us with the notion that Peña's independent suit (Civil Case No. 1088) to secure the transfer of EQLPI certificates of stock in his name must be considered to be still part of the execution proceedings in Civil Case No. 754, which must be enjoined as well. But it is not. Upon the sale of personal property on execution, all ownership and proprietary rights leave the judgment debtor and become vested in the purchaser,[55] and the judgment debtor may no longer recover the same by redemption, to which he has no right. As the new owners of the shares of stock in EQLPI, Manila Polo Club, Manila Golf and Country Club, Sta. Elena Golf and Country Club, and Tagaytay Highlands International Golf Club, Peña, his assignees, as well as the other purchasers at the execution sale where these shares were sold, are entitled — without delay — to transfer said shares in their name and exercise ownership over the same.

WHEREFORE, the petition is *DENIED* for lack of merit. The March 19, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65023, dismissing the petition for indirect contempt and the petition for prohibition and *certiorari* instituted to enjoin the Regional Trial Court of Bago City, Branch 62, from further proceeding with Civil Case Nos. 754 and 1088, as well as the July 27, 2004 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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[53] *Paray v. Rodriguez*, G.R. No. 132287, January 24, 2006, 479 SCRA 571, 580.

[54] *Rollo*, p. 448.

[55] *Paray v. Rodriguez*, *supra* at 579.

SECOND DIVISION

[G.R. No. 165114. August 6, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MABELLE RAVELO and SPOUSES EMMANUEL and PERLITA REDONDO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; PUBLIC LAND ACT (CA NO. 141); APPLICATION FOR LAND PATENT; MISREPRESENTATION THEREIN SHALL PRODUCE CANCELLATION OF THE GRANT; CASE AT BAR. —** Under **Section 91 of CA No. 141**, the "*statements made in application shall be considered essential conditions and parts of any concession, title or permit issued on the basis of such application, and any false statement therein or omission of facts altering or changing or modifying the consideration of the facts set forth in such statements . . .* ***shall ipso facto produce the cancellation of the concession, title, or permit granted***." This provision is reinforced by jurisprudential rulings that stress in no uncertain terms the consequences of any fraud or misrepresentation committed in the course of applying for a land patent.

2. **CIVIL LAW; LAND TITLES; PD 1529 ON CONVEYANCES OF REGISTERED LAND; TRANSACTION WITHOUT REGISTRATION RE: REGISTERED LAND IS ONLY A CONTRACT BETWEEN THE PARTIES AND SHALL NOT AFFECT THE REGISTERED PROPERTY. —** While the appellate court was correct in its general statement about the perfection of a contract of sale, it did not take into account that the subject matter of the sale was a **registered land** to which special rules apply in addition to the general rules on sales under the Civil Code. Section 51 of Presidential Decree No. 1529 which governs conveyances of registered lands provides: Sec. 51.***Conveyance and other dealings by registered owner*. —** An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are

sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but ***shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration. The act of registration shall be the operative act to convey or affect the land in so far as third persons are concerned***, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. Thus, bereft of registration, any sale or transaction involving registered land operates only as a contract between the parties and shall not affect or bind the registered property.

3. ID.; ID.; ID.; ID.; BUYER IN GOOD FAITH; CASE AT BAR. — One material development that affected the subject lot as a *registered property* was the notice of levy that the sheriff caused to be annotated in Ravelo's OCT No. P-4517 on March 17, 1993 pursuant to the order of the court in the collection case filed by Antonio Chieng against Ravelo. This was followed by the Certificate of Sale that was again annotated in Ravelo's title on May 25, 1993. Another material development was the annotation of a notice of *lis pendens* on March 24, 1994 at the instance of the government, to reflect the pendency of the State's claim for cancellation of title and the reversion of the subject lot against Ravelo. We consider these developments material as they embody notices to the whole world of transactions affecting the registered subject lot; they should be the starting point of any consideration of the existence of good or bad faith of the parties dealing with the land. These annotations signify that Chieng's purchase of the subject lot in the execution sale constituted a prior and superior claim *in time* over the subject lot by any of the *dramatis personae* in the present case. Thus, barring any defect in the sale itself and assuming that Chieng did not have any prior knowledge, constructive or otherwise, of any defect in Ravelo's title, Chieng has a prior claim to the property that is protected by the fact of registration and by his status as an innocent buyer in good faith and for value. The legal protection offered by registration under the Torrens system compels us to recognize the validity of the claim of an innocent purchaser for value despite any defect in the vendor's title. Likewise, it does not matter that the final deed of sale and transfer of registration of the title

to Chieng, as innocent purchaser for value at an auction sale, occurred subsequent to the annotation of the intervening notice of *lis pendens*, as the final deed of sale and transfer are the necessary consequences of the previously registered notice of levy and certificate of sale. The Redondos came into the picture when they contracted with Chieng for their purchase of the subject property. Their inspection of the records at the Registry of Deeds should have confirmed to them that the subject lot was a registered land and that Chieng, their seller, was not yet the registered owner, but one who merely had a sheriff's Certificate of Sale. Contrary to the lower courts' reading of the May 11, 1993 transaction between Chieng and the Redondos, what Chieng sold was not the subject lot because he was not yet a registered owner who could effectively convey the property at that point. What Chieng sold was "*his rights under a Certificate of Sale on the property covered by Original Certificate of Title No. P-4517*." Significantly, this May 11, 1993 agreement was not registered nor annotated in OCT No. P-4517 because it was technically a side agreement relating to but not directly affecting the registered property, and was thus enforceable only between the parties — Chieng and the Redondos. Thus, the government cannot be effectively put on notice of the May 11, 1993 agreement when it registered its notice of *lis pendens* on March 24, 1994. Consequently, too, the Redondos are differently situated in terms of the determination of their good faith and cannot simply claim what Chieng can personally claim as innocent purchaser for value of the subject lot at an execution sale. To complete the whole picture of the series of developments involved, it was not until September 23, 1994 that the final Bill of Sale dated June 26, 1994 in favor of Chieng was inscribed as Entry No. 2419 on OCT No. P-4517. OCT No. P-4517 was thereafter cancelled and TCT No. T-7209 in Chieng's name was issued (carrying the government's notice of *lis pendens* as Entry No. 7219). *It was only at this point that* ***Chieng, as registered owner****, could have sold or could have done an act binding the subject lot*. A deed of sale dated November 21, 1994 in favor of the Redondos was inscribed at the back of Chieng's TCT No. T-7209 on December 20, 1994. On the same day, TCT No. T-7261 in the Redondos' name was issued, still carrying the *lis pendens* Entry No. 7219. From these perspectives, we cannot see how the Redondos could have been

purchasers in good faith in May 1993 *when they were not even purchasers of the subject lot at that point*. Specifically, it was not until Chieng and the Redondos executed their November 21, 1994 deed of sale over the subject lot that they had a contract of sale that would have served as *evidence of authority to the Register of Deeds to make registration*. It was only then when *a sale of real property by a registered owner* was concluded where good faith or bad faith on the part of the buyer would have mattered — but at that point a notice of *lis pendens* had already been annotated. In sum, we hold that the Court of Appeals erred in concluding that the Redondos were buyers in good faith. They purchased the subject lot from Chieng subject to the government's notice of *lis pendens*; hence, their purchase was at the risk of the outcome of the State's complaint for cancellation and reversion which we find to be meritorious. The subject lot must therefore revert back to the public domain.

4. ID.; ID.; NOTICE OF *LIS PENDENS*; ELUCIDATED. — *Lis pendens* literally means "a pending suit", while a **notice of *lis pendens***, inscribed in the certificate of title, is an announcement to the whole world that the covered property is in litigation, serving as a warning that one who acquires interest in the property does so at his own risk and subject to the results of the litigation. This is embodied in Section 76 of Presidential Decree (P.D.) No. 1529 which provides that *no action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.* The notice that this provision speaks of — the notice of *lis pendens* — is not a lien or encumbrance on the property, but simply a notice to prospective buyers or to those dealing with the property that it is under litigation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Estanislao L. Cesa, Jr. and *Marc Raymundo S. Cesa* for Sps. Redondo.

D E C I S I O N

BRION, *J*.:

The State seeks in this Petition for Review on *Certiorari*[1] to secure the cancellation of title and reversion of a real property granted to Mabelle Ravelo under a sales patent. Title to the property has passed on to parties who now claim that they are innocent purchasers in good faith; thus their claim cannot be defeated by any defect in the title of the original grantee.

The records show the pertinent facts summarized below.

On September 17, 1969, Jose Fernando filed a miscellaneous sales application over Lot No. 16, Block 2 *(subject lot)* situated in Mabayuan Extension, Gordon Heights, Olongapo City. On June 10, 1970, he relinquished his right over the subject lot to Victoriano Mortera, Jr., who submitted his own patent application. On June 13, 1983, one Severino Muyco also filed a miscellaneous sales application for the same property.

The Department of Environment and Natural Resources (*DENR*)-Region III investigated the conflict between the two applications. On May 31, 1989, it issued an order in favor of Jose Fernando and Victoriano Mortera, Jr.

Prior to the DENR's action, specifically on February 16, 1989, the Director of Lands issued Sales Patent No. 12458 covering the same subject lot to respondent Mabelle B. Ravelo (*Ravelo*). She was subsequently issued Original Certificate of Title (*OCT*) No. P-4517 registered with the Registry of Deeds of Olongapo City. In effect, the DENR-III's Order of May 31, 1989 in the Fernando-Mortera-Muyco dispute was not enforced;

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[1] Filed pursuant to Rule 45 of the Revised Rules of Court.

on August 4, 1989 Jose Fernando filed a protest against Ravelo's title.

The petitioner Republic of the Philippines (*petitioner*), through the DENR-III Executive Director, filed a complaint[2] for cancellation of title against Ravelo before the Olongapo Regional Trial Court *(RTC)* on November 6, 1992. Assisted by the Office of the Solicitor General (*OSG*), the petitioner asked for the cancellation of Ravelo's OCT No. P-4517 and Sales Patent No. 12458 on the allegation that the issuance of the patent by the Director of Lands violated DENR Administrative Order (*A.O.*) No. 20 dated May 30, 1998. This A.O. mandates that applications for sales patent should be filed with the DENR regional office that has jurisdiction over the land applied for, not with the Director of Lands in Manila. Ravelo's application was filed with the Director of Lands in Manila although the subject lot is located in Olongapo City; the application should have been filed with DENR-III in San Fernando, Pampanga. The government also accused Ravelo of fraud for asserting in her application that the land was not occupied and was a part of the public domain.

On March 24, 1994, a notice of *lis pendens* (indicating the pendency of the petitioner's complaint) was inscribed as Entry No. 7219 on Ravelo's OCT No. P-4517.

In a separate development, one Antonio Chieng filed on December 13, 1989 a collection suit against Ravelo before the RTC of Olongapo City, which suit led to a judgment against Ravelo and the issuance of a writ of execution. The Notice of Levy was registered with the Register of Deeds on March 17, 1993. In the auction sale that followed, Wilson Chieng (*Chieng*), Antonio Chieng's son, won as highest bidder. A certificate of sale was issued to Chieng and the sale was registered with the Olongapo Registry of Deeds on May 25, 1993.

The respondent-spouses Emmanuel and Perlita Redondo (*Redondos*), who own and reside in a property adjacent to the

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[2] *Rollo*, pp. 43-48.

subject lot, subsequently bought the subject lot from Chieng. The parties first signed an agreement for the purchase of the subject lot on May 11, 1993, and upon payment of the agreed purchase price, executed on December 20, 1993 a deed of absolute sale.

On September 23, 1994, the final deed of sale (dated June 26, 1994) covering the subject lot in favor of Chieng was inscribed as Entry No. 2419 on OCT No. P-4517. On the same date, Transfer Certificate of Title (TCT) No. T-7209 covering the subject lot was issued to Chieng. Entry No. 7219 (the petitioner's complaint for cancellation and reversion) was carried at the back of Chieng's TCT No. T-7209.

Chieng and the Redondos entered into another deed of sale in the Redondos' favor on November 21, 1994. This deed was inscribed as Entry No. 7554 at the back of TCT T-7209 on December 20, 1994. On the same day, TCT No. T-7261 covering the subject lot was issued to the Redondos.

In her Answer, Ravelo insisted that her application passed through the regular process; that she had been in possession of the property from the time of her application; and that Mortera was never in possession of the land.

The trial court received the government's evidence *ex-parte* after Ravelo failed to attend the trial.

On January 6, 1995, the Redondos intervened, alleging that they acquired the subject lot in good faith and for value. Emmanuel Redondo testified that Antonio Chieng's son Wilson executed a deed of sale dated December 20, 1993 in his and his wife Perlita's favor. After their purchase, they secured a certification from the Bureau of Forestry declaring the land for taxation purposes.

The Trial Court Decision

On May 12, 1998, the RTC decided in the petitioner's favor and cancelled Ravelo's Sales Patent No. 12458 and OCT No. P-4517, Chieng's TCT No. T-7209, and the Redondos' TCT No. T-7261. The court also ordered the reversion of the land

to the mass of the public domain,[3] relying on the Bureau of Land's recommendation to cancel Ravelo's title and patent for being fraudulently obtained. It explained that the intervenors were not buyers in good faith because they failed to inquire with the trial court whether other cases have been filed against Ravelo. It agreed with the OSG that the land should revert to petitioner pursuant to Commonwealth Act (*C.A.*) No. 141 or the Public Land Act, as amended by Republic Act (*R.A.*) No. 6516[4] because it was sold in a public auction within the period when the alienation of lands granted through sales patent is prohibited.

The Court of Appeals Decision

The Court of Appeals, on the Redondos' appeal docketed as CA-G.R. CV No. 60665,[5] reversed and set aside the trial court's ruling and declared the Redondos as innocent purchasers in good faith. The appellate court also declared the Redondos' TCT No. T-7261 valid.[6]

The appellate court ruled that the Redondos were buyers in good faith because they and Chieng entered their agreement for the purchase of the subject lot on May 11, 1993 and executed their Deed of Sale on December 20, 1993, prior to the annotation of the notice of *lis pendens* on March 24, 1994, and prior as well to any awareness by the Redondos of the existence of any flaw in the vendor's title. It explained that the Redondos' conduct carried all the badges of propriety and regularity as they verified the regularity of the title to the property with the proper registry

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[3] *Id.*, pp. 49-62.

[4] An Act providing for the Sale of Agricultural Public Lands and Authorizing Land Officers in Every Province of the Bureau of Lands to Sign Patents or Certificates Covering Lands not Exceeding Five hectares, further Amending for the Purpose Commonwealth Act No. 141.

[5] Dated August 24, 2004, with Associate Justice Arcangelita M. Romilla-Lontok as *ponente*, and Associate Justice Rodrigo V. Cosico and Associate Justice Danilo B. Pine (both retired), concurring.

[6] *Rollo*, pp 36-42.

of deeds before buying it. Ravelo's title, even if tainted with fraud, may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.

The Petition and the Parties' Positions

The petitioner comes to this Court in the present petition to assail the Court of Appeals decision and submits the following assigned errors:

I.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN REVERSING THE DECISION OF THE TRIAL COURT[,] CANCELING THE TITLES OF RESPONDENTS AND REVERTING [THE] SUBJECT LAND TO THE MASS OF PUBLIC DOMAIN[,]ON THE GROUND THAT A FRAUDULENT TITLE MAY NOT BE THE BASIS OF A VALID TITLE.

II.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN DECLARING THAT RESPONDENTS REDONDO SPOUSES ARE INNOCENT PURCHASERS IN GOOD FAITH AND FOR VALUE OF THE PROPERTY.[7]

The petitioner argues that the innocent purchaser for value doctrine is inapplicable because the mother title was procured through fraud. Specifically, Ravelo's title could not have been the source of valid titles for Chieng and the Redondos because it was void in the first place. Ravelo's failure to disclose in her patent application that Victoriano Mortera, Jr. was in possession of the subject lot constituted fraud and misrepresentation — grounds for the annulment of her title. If a public land is acquired by an applicant through fraud and misrepresentation, the State may institute reversion proceedings even after the lapse of one year.

The petitioner likewise contends that the Redondos as vendees cannot rely solely on the face of the title as they did not transact directly with the registered owner; they transacted with Chieng

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

whose right to the property was based on a certificate of sale. Thus, the Redondos merely relied on the certificate of sale instead of examining the title covering the subject lot. To be deemed a buyer in good faith and for value, the vendee must at least see the registered owner's duplicate copy of the title and must have relied on it in examining the factual circumstances and in determining if there is any flaw in the title. Petitioner finally notes that *lis pendens* was already annotated on the title at the time the deed of sale was registered.

The respondent Redondos spouses counter they are not obliged by law to go beyond the certificate of registration to determine the condition of the property. Any alleged irregularity in the issuance of Ravelo's OCT No. P-4517 cannot affect them since a patent issued administratively has the force and effect of a Torrens Title under Act No. 496 (the Land Registration Act) and partakes of the nature of a certificate of title issued in judicial proceedings. At the time they purchased the property from Chieng with the execution of their Agreement dated May 11, 1993, there was no encumbrance on OCT No. P-4517 except the notice of levy and certificate of sale in favor of Chieng. They had full notice of the physical condition of the land, and no adverse claim of ownership or possession existed when they inspected the records of the Register of Deeds and of the City Assessor. Since their residence adjoins the subject lot, they could attest that no one used the subject lot and no improvement has been introduced showing that there was adverse possession by any party.[8]

Respondent Ravelo failed to file a comment.

Two issues are effectively submitted to us for resolution, namely:

1. **Whether there is basis for the cancellation of Ravelo's original title and the reversion of the subject lot to the public domain; and**

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[8] Respondent-spouses' Comment; *id.*, pp. 67-79.

2. Whether the Redondos are innocent purchasers in good faith and for value, whose title over the subject lot that could defeat the petitioner's cause of action for cancellation of title and reversion.

The Court's Ruling

We find the petition meritorious.

The Reversion Issue:
Misrepresentation in the Application

Under **Section 91 of CA No. 141**, the *"statements made in application shall be considered essential conditions and parts of any concession, title or permit issued on the basis of such application, and any false statement therein or omission of facts altering or changing or modifying the consideration of the facts set forth in such statements . . .* ***shall ipso facto produce the cancellation of the concession, title, or permit granted."*** This provision is reinforced by jurisprudential rulings that stress in no uncertain terms the consequences of any fraud or misrepresentation committed in the course of applying for a land patent.[9]

The record shows that Ravelo, the grantee, limited herself in her Answer to the position that the application passed through the regular process; that she had been in possession of the property from the time of her application; and that Mortera was never in possession of the land. Thereafter, Ravelo failed to attend trial and present evidence so that the lower court received the government's evidence *ex-parte.* The Redondos, who intervened after title to the property passed on to them, did not touch at all the misrepresentation aspect of the complaint on the theory that, as purchasers in good faith, the misrepresentation of Ravelo

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[9] See *Heirs of Carlos Alcaraz v. Republic of the Philippines, et al.*, G.R. No. 131667, July 28, 2005, 464 SCRA 280; *Republic of the Philippines v. Heirs of Felipe Alejaga, Sr., et al.*, G.R. No. 146030, December 3, 2002, 393 SCRA 361; *Republic of the Philippines v. de Guzman*, G.R. No. 105630, February 23, 2000, 326 SCRA 267; *Baguio v. Republic of the Philippines*, G.R. No. 119682, January 21, 1999, 301 SCRA 450.

cannot affect their title.[10] Thus, the presence of fraud or misrepresentation was practically an issue that the Ravelo and the Redondos conceded to the government.

This legal situation, notwithstanding, the Court of Appeals practically disregarded the misrepresentation issue and followed the Redondos' argument that the flaw in Ravelo's title is immaterial because they were purchasers in good faith of a titled property. This reasoning brings to the fore the issues of good faith and of the annotations in the original certificate of title including the notice of *lis pendens* that was registered on March 24, 1994.

The Good Faith Issue

The Court of Appeals approached the issue of good faith based mainly on its view that there had been a perfected sale prior to the annotation of the notice of *lis pendens.* To the appellate court, the Redondos purchased the subject lot prior to the annotation of the notice of *lis pendens* by the petitioner, and were thus without knowledge or notice of any flaw in the title. To quote the appellate court:

> Wilson Chieng and the intervenors entered into said agreement prior to the annotation of the notice of *lis pendens* on March 24, 1994. The consensual contract of sale was, therefore, perfected on May 11, 1993, prior to any awareness on the part of the intervenors as the existence of any flaw in the vendor's title. Said agreement has been duly notarized. There was a meeting of the minds between Wilson Chieng and spouses Redondo; there is a determinate subject which is the land covered by OCT P-4517 and a price certain in the sum of ₱85,000.00 which intervenors agreed to pay Wilson Chieng. Intervenors are, thus, buyers in good faith and for value under the contemplation of our laws. No evidence was presented by the other parties to refute said fact. Neither was there any evidence introduced to assail the genuineness and due execution of the agreement. It is a public instrument which enjoys the presumption of regularity.

We find this approach to be simplistic as it disregards, among others, the nature of a sale of registered real property, as well

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[10] See RTC Decision, p. 7; *rollo*, p. 55.

as other material and undisputed developments in the case. For example, while the appellate court was correct in its general statement about the perfection of a contract of sale, it did not take into account that the subject matter of the sale was a **registered land** to which special rules apply in addition to the general rules on sales under the Civil Code. Section 51 of Presidential Decree No. 1529 which governs conveyances of registered lands provides:

> Sec. 51. ***Conveyance and other dealings by registered owner***. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but ***shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration***.
>
> ***The act of registration shall be the operative act to convey or affect the land in so far as third persons are concerned,*** and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Thus, bereft of registration, any sale or transaction involving registered land operates only as a contract between the parties and shall not affect or bind the registered property.

One material development that affected the subject lot *as a registered property* was the notice of levy that the sheriff caused to be annotated in Ravelo's OCT No. P-4517 on March 17, 1993 pursuant to the order of the court in the collection case filed by Antonio Chieng against Ravelo. This was followed by the Certificate of Sale that was again annotated in Ravelo's title on May 25, 1993.

Another material development was the annotation of a notice of *lis pendens* on March 24, 1994 at the instance of the government, to reflect the pendency of the State's claim for

cancellation of title and the reversion of the subject lot against Ravelo.

Interestingly, the annotation of the levy in execution and the certificate of sale did not merit any consideration in the decisions of both the trial and the appellate courts. We, however, consider these developments material as they embody notices to the whole world of transactions affecting the registered subject lot; they should be the starting point of any consideration of the existence of good or bad faith of the parties dealing with the land. These annotations signify that Chieng's purchase of the subject lot in the execution sale constituted a prior and superior claim *in time* over the subject lot by any of the *dramatis personae* in the present case.

Thus, barring any defect in the sale itself and assuming that Chieng did not have any prior knowledge, constructive or otherwise, of any defect in Ravelo's title, Chieng has a prior claim to the property that is protected by the fact of registration and by his status as an innocent buyer in good faith and for value. The legal protection offered by registration under the Torrens system compels us to recognize the validity of the claim of an innocent purchaser for value despite any defect in the vendor's title.[11] Likewise, it does not matter that the final deed of sale and transfer of registration of the title to Chieng, as innocent purchaser for value at an auction sale, occurred subsequent to the annotation of the intervening notice of *lis pendens*, as the final deed of sale and transfer are the necessary consequences of the previously registered notice of levy and certificate of sale.[12]

The Redondos came into the picture when they contracted with Chieng for their purchase of the subject property. Their inspection of the records at the Registry of Deeds should have confirmed to them that the subject lot was a registered land

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[11] *Cruz v. Court of Appeals,* G.R. No. 120122, November 6, 1997, 281 SCRA 491.

[12] *Prineda v. Court of Appeals,* G.R. No. 114172, August 25, 2003, 409 SCRA 438.

and that Chieng, their seller, was not yet the registered owner, but one who merely had a sheriff's Certificate of Sale. Contrary to the lower courts' reading of the May 11, 1993 transaction between Chieng and the Redondos, what Chieng sold was not the subject lot because he was not yet a registered owner who could effectively convey the property at that point. What Chieng sold was *"his rights under a Certificate of Sale on the property covered by Original Certificate of Title No. P-4517."*[13] Significantly, this May 11, 1993 agreement was not registered nor annotated in OCT No. P-4517 because it was technically a side agreement relating to but not directly affecting the registered property, and was thus enforceable only between the parties – Chieng and the Redondos. Thus, the government cannot be effectively put on notice of the May 11, 1993 agreement when it registered its notice of *lis pendens* on March 24, 1994. Consequently, too, the Redondos are differently situated in terms of the determination of their good faith and cannot simply claim what Chieng can personally claim as innocent purchaser for value of the subject lot at an execution sale.

To complete the whole picture of the series of developments involved, it was not until September 23, 1994 that the final Bill of Sale dated June 26, 1994 in favor of Chieng was inscribed as Entry No. 2419 on OCT No. P-4517. OCT No. P-4517 was thereafter cancelled and TCT No. T-7209 in Chieng's name was issued (carrying the government's notice of *lis pendens* as Entry No. 7219). *It was only at this point that* ***Chieng, as registered owner,*** *could have sold or could have done an act binding the subject lot.* A deed of sale dated November 21, 1994 in favor of the Redondos was inscribed at the back of Chieng's TCT No. T-7209 on December 20, 1994. On the same day, TCT No. T-7261 in the Redondos' name was issued, still carrying the *lis pendens* Entry No. 7219.[14]

From these perspectives, we cannot see how the Redondos could have been purchasers in good faith in May 1993 *when they were not even purchasers of the subject lot at that point.*

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[13] Court of Appeals Decision, p. 5; *rollo,* p. 40.

[14] *Id.,*pp. 38-39.

Specifically, it was not until Chieng and the Redondos executed their November 21, 1994 deed of sale over the subject lot that they had a contract of sale that would have served as *evidence of authority to the Register of Deeds to make registration.* It was only then when a *sale of real property by a registered owner* was concluded where good faith or bad faith on the part of the buyer would have mattered — but at that point a notice of *lis pendens* had already been annotated.

The Notice of *Lis Pendens*

Lis pendens literally means "a pending suit," while a **notice of *lis pendens***, inscribed in the certificate of title, is an announcement to the whole world that the covered property is in litigation, serving as a warning that one who acquires interest in the property does so at his own risk and subject to the results of the litigation.[15] This is embodied in Section 76 of Presidential Decree (P.D.) No. 1529 which provides that *no action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.* The notice that this provision speaks of — the notice of *lis pendens* — is not a lien or encumbrance on the property, but simply a notice to prospective buyers or to those dealing with the property that it is under litigation.[16]

[15] *Heirs of Eugenio Lopez, Sr. v. Enriquez*, G.R. No. 146262, January 21, 2005, 449 SCRA 173; *Legarda v. Court of Appeals*, G.R. No. 94457, October 16, 1997, 280 SCRA 642.

[16] *People v. Regional Trial Court of Manila*, G.R. No. 81541, October 4, 1989, 178 SCRA 299.

As our above discussion shows, the government's notice of *lis pendens* came after the execution sale and thus cannot affect Chieng and the conveyance to him of the subject lot. However, the notice affects all transactions relating to OCT No. P-4517 subsequent to its registration date — March 24, 1994. From that date, there was a binding notice to the whole world that any subsequent claim on OCT No. P-4517 would be subject to the annotated pending action. Specifically, the sale by Chieng to the Redondos of the subject lot on December 20, 1994 was subject to the notice of *lis pendens* duly annotated on Chieng's title.

Cancellation and Reversion

Separately from the misrepresentation that tainted Ravelo's sales patent, the RTC decision points to a supervening cause for cancellation and reversion that transpired after the filing of the petitioner's complaint on November 6, 1992 — the sale on execution of the subject lot. According to the RTC, this was sale prohibited under Section 29 of the CA No. 141 since it was made within ten years from the grant of the patent[17] and should have the legal effect of voiding the sale on execution of the subject lot.

We disagree with this conclusion as the applicable law in the sale of land of the public domain for residential purposes is R.A. No. 730,[18] as amended by P.D. No.

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[17] Section 29. After title has been granted, the purchaser may not, within a period of ten years from such cultivation or grant, convey or encumber or dispose said lands or rights thereon to any person, corporation or association, without prejudice to any right or interest of the Government in the land; *Provided,* That any sale and encumbrance made in violation of the provisions of this section, shall be null and void and shall produce the effect of annulling the acquisition and reverting the property and all rights thereto to the State, and all payments on the purchase price therefore made to the Government shall be forfeited. (*As amended by Rep. Act No. 6516)*

[18] Republic Act No. 730 — An Act to Permit the Sale without Public Auction of Public Lands of the Republic of the Philippines for Residential Purposes to Qualified Applicants under Certain Conditions.

2004.[19] While R.A. No.730 originally carried the same prohibition that Sec. 29 of CA No. 141 has, P.D. No. 2004 dated December 30, 1985 removed this prohibition for lands sold for residential purposes under R.A. No. 730. Thus, the execution

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SECTION 1. Notwithstanding the provisions of sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten per cent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

SECTION 2. Except in favor of the Government or any of its branches, units, or institutions lands acquired under the provisions of this Act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. No transfer or alienation made after the said period of ten years and within fifteen years from the issuance of such patent except those made by virtue of the right of succession shall be valid unless when duly authorized by the Secretary of Agriculture and Natural Resources and the transferee or vendee is a Filipino citizen. Every conveyance made shall be subject to repurchase by the original purchaser or his legal heirs within a period of five years from the date of conveyance.

Any contract or agreement made or executed in violation of this section shall be void *ab initio*.

SECTION 3. The provisions of the Public Land Act with respect to the sale of lands for residential purposes which are not inconsistent herewith shall be applicable.

SECTION 4. This Act shall take effect upon its approval.

Approved: June 18, 1952; Published in the Official Gazette, Vol. 48, No. 7 in July 1952

[19] P.D. No. 2004 – Amending Section Two of Republic Act 730 relative to the Sale without Public Auction of Public Lands of the Republic of the Philippines for Residential Purposes to Qualified Applicants under Certain Conditions.

sale of the subject lot in 1993 was undertaken without any attendant legal impediment.

Conclusion

In sum, we hold that the Court of Appeals erred in concluding that the Redondos were buyers in good faith. They purchased the subject lot from Chieng subject to the government's notice of *lis pendens*; hence, their purchase was at the risk of the outcome of the State's complaint for cancellation and reversion which we find to be meritorious. The subject lot must therefore revert back to the public domain.

WHEREFORE, premises considered, we *GRANT* the petition. We *REVERSE* the decision of the Court of Appeals in CA-G.R. CV No. 60665 and accordingly *DECLARE VOID* respondent Mabelle B. Ravelo's Miscellaneous Sales Patent No. 12458 and OCT No. P-4517. We likewise order the

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WHEREAS, Republic Act No. 730 permits the sale without public auction of public lands of the Republic of the Philippines for residential purposes to qualified applicants under certain conditions;

WHEREAS, land required thereunder are subject to onerous restrictions against encumbrance or alienation;

WHEREAS, it is necessary to remove these onerous restrictions to allow the effective utilization of these lands.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, pursuant to the powers vested in me by the Constitution, do hereby decree:

SECTION 1. Section Two of Republic Act Numbered Seven Hundred and Thirty is hereby amended to read as follows:

"Sec. 2. Lands acquired under the provisions of this Act shall not be subject to any restrictions against encumbrance or alienation before and after the issuance of the patents thereon."

SECTION 2. This Decree shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

DONE in the City of Manila, this 30th day of December, in the year of Our Lord, Nineteen Hundred and Eighty-Five.

CANCELLATION of Transfer Certificate of Title No. T-7261 issued in the name of Emmanuel and Perlita Redondo and the *REVERSION* to the mass of the public domain of the property it covers — Lot 16, Block 2, located in Mabayuan Extension, Gordon Heights, Olongapo City.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 166405. August 6, 2008]

CLAUDE P. BAUTISTA, *petitioner, vs.* **AUTO PLUS TRADERS, INCORPORATED and COURT OF APPEALS (Twenty-First Division),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTION; VARIANCE IN FINDINGS. —** Private respondent's allegation that petitioner issued a personal check disputes the factual findings of the MTCC. The MTCC found that the two checks belong to Cruiser Bus Lines and Transport Corporation while the RTC found that one of the checks was a personal check of the petitioner. Generally this Court, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, has no jurisdiction over questions of facts. But, considering that the findings of the MTCC and the RTC are at variance, we are compelled to settle this issue.

[*] Designated additional member of the Second Division per Special Order No. 512 dated July 16, 2008.

2. COMMERCIAL LAW; CORPORATION LAW; JURIDICAL ENTITIES SEPARATE AND DISTINCT FROM ITS OFFICERS; LIABILITY OF THE FORMER NOT CHARGEABLE AGAINST THE LATTER. — We find the appellate court in error for affirming the decision of the RTC holding petitioner liable for the value of the checks considering that petitioner was acquitted of the crime charged and that the debts are clearly corporate debts for which only Cruiser Bus Lines and Transport Corporation should be held liable. Juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. These situations, however, do not exist in this case. The evidence shows that it is Cruiser Bus Lines and Transport Corporation that has obligations to Auto Plus Traders, Inc. for tires. There is no agreement that petitioner shall be held liable for the corporation's obligations in his personal capacity. Hence, he cannot be held liable for the value of the two checks issued in payment for the corporation's obligation in the total amount of ₱248,700.

3. ID.; NEGOTIABLE INSTRUMENTS LAW; ACCOMMODATION PARTY; NOT APPRECIATED IN THE ABSENCE OF REQUISITE THAT INSTRUMENT WAS SIGNED FOR THE PURPOSE OF LENDING NAME OR CREDIT. — Section 29 of the Negotiable Instruments Law defines an accommodation party as a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." As gleaned from the text, an accommodation party is one who meets all the three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person. An accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto. The first two elements are present here, however there is insufficient evidence presented in the instant case to show the presence

of the third requisite. All that the evidence shows is that petitioner signed Check No. 58832, which is drawn against his personal account. The said check, *dated December 15, 2000,* corresponds to the value of 24 sets of tires received by Cruiser Bus Lines and Transport Corporation on August 29, 2000. There is no showing of when petitioner issued the check and in what capacity. In the absence of concrete evidence it cannot just be assumed that petitioner intended to lend his name to the corporation. Hence, petitioner cannot be considered as an accommodation party.

VELASCO, JR., *J.*, *dissenting opinion:*

CRIMINAL LAW; B.P. BLDG. 22 (BOUNCING CHECKS LAW); PETITIONER IS CIVILLY LIABLE FOR THE AMOUNTS OF TWO CHECKS HE ISSUED BECAUSE RESPONSIBILITY UNDER B.P. BLG. 22 IS PERSONAL TO THE ACCUSED AND SECTION 1 OF SAID LAW IS CLEAR THAT THE PERSON WHO ACTUALLY SIGNED THE BAD CHECK IS LIABLE.— I submit that petitioner Bautista is civilly liable for the amounts of the two checks he issued; hence, the Court of Appeals' Decision affirming that of the Regional Trial Court should be upheld and the instant petition be dismissed. Responsibility under BP Blg. 22 is personal to the accused and Sec. 1 of said law is clear that the person who actually signed the bad check is liable.

APPEARANCES OF COUNSEL

Rodolfo B. Ta-Asan, Jr. for petitioner.
Bansalan B. Metilla for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the Decision[1] dated August 10, 2004 of the Court of Appeals in CA-G.R. CR

[1] *Rollo*, pp. 36-40. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Arturo A. Tayag and Edgardo G. Camello concurring.

No. 28464 and the Resolution[2] dated October 29, 2004, which denied petitioner's motion for reconsideration. The Court of Appeals affirmed the February 24, 2004 Decision and May 11, 2004 Order of the Regional Trial Court (RTC), Davao City, Branch 16, in Criminal Case Nos. 52633-03 and 52634-03.

The antecedent facts are as follows:

Petitioner Claude P. Bautista, in his capacity as President and Presiding Officer of Cruiser Bus Lines and Transport Corporation, purchased various spare parts from private respondent Auto Plus Traders, Inc. and issued two postdated checks to cover his purchases. The checks were subsequently dishonored. Private respondent then executed an affidavit-complaint for violation of *Batas Pambansa Blg*. 22[3] against petitioner. Consequently, two Informations for violation of *BP Blg*. 22 were filed with the Municipal Trial Court in Cities (MTCC) of Davao City against the petitioner. These were docketed as Criminal Case Nos. 102,004-B-2001 and 102,005-B-2001. The Informations[4] read:

Criminal Case No. 102,004-B-2001:

The undersigned accuses the above-named accused for violation of Batas Pambansa Bilang 22, committed as follows:

That on or about December 15, 2000, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, knowing fully well that he had no sufficient funds and/or credit with the drawee bank, wilfully, unlawfully and feloniously issued and made out Rural Bank of Digos, Inc. Check No. 058832, dated December 15, 2000, in the amount of ₱151,200.00, in favor of Auto Plus Traders, Inc., but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "DRAWN AGAINST INSUFFICIENT

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[2] *Id*. at 41.

[3] AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.

[4] *Rollo*, pp. 48-49.

FUNDS" and despite notice of dishonor and demands upon said accused to make good the check, accused failed and refused to make payment to the damage and prejudice of herein complainant.

CONTRARY TO LAW.

Criminal Case No. 102,005-B-2001:

The undersigned accuses the above-named accused for violation of Batas Pambansa Bilang 22, committed as follows:

That on or about October 30, 2000, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, knowing fully well that he had no sufficient funds and/or credit with the drawee bank, wilfully, unlawfully and feloniously issued and made out Rural Bank of Digos, Inc. Check No. 059049, dated October 30, 2000, in the amount of ₱97,500.00, in favor of Auto Plus Traders, [Inc.], but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "DRAWN AGAINST INSUFFICIENT FUNDS" and despite notice of dishonor and demands upon said accused to make good the check, accused failed and refused to make payment, to the damage and prejudice of herein complainant.

CONTRARY TO LAW.

Petitioner pleaded not guilty. Trial on the merits ensued. After the presentation of the prosecution's evidence, petitioner filed a demurrer to evidence. On April 21, 2003, the MTCC granted the demurrer, thus:

WHEREFORE, the demurrer to evidence is granted, premised on reasonable doubt as to the guilt of the accused. Cruiser Bus Line[s] and Transport Corporation, through the accused is directed to pay the complainant the sum of ₱248,700.00 representing the value of the two checks, with interest at the rate of 12% per annum to be computed from the time of the filing of these cases in Court, until the account is paid in full; ordering further Cruiser Bus Line[s] and Transport Corporation, through the accused, to reimburse complainant the expense representing filing fees amounting to ₱1,780.00 and costs of litigation which this Court hereby fixed at ₱5,000.00.

SO ORDERED.[5]

Petitioner moved for partial reconsideration but his motion was denied. Thereafter, both parties appealed to the RTC. On February 24, 2004, the trial court ruled:

WHEREFORE, the assailed Order dated April 21, 2003 is hereby MODIFIED to read as follows: Accused is directed to pay and/or reimburse the complainant the following sums: (1) ₱248,700.00 representing the value of the two checks, with interest at the rate of 12% per annum to be computed from the time of the filing of these cases in Court, until the account is paid in full; (2) ₱1,780.00 for filing fees and ₱5,000.00 as cost of litigation.

SO ORDERED.[6]

Petitioner moved for reconsideration, but his motion was denied on May 11, 2004. Petitioner elevated the case to the Court of Appeals, which affirmed the February 24, 2004 Decision and May 11, 2004 Order of the RTC:

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision of the Regional Trial Court, Branch 16, Davao City, dated February 24, 2004 and its Order dated May 11, 2004 are **AFFIRMED**.

SO ORDERED.[7]

Petitioner now comes before us, raising the sole issue of whether the Court of Appeals erred in upholding the RTC's ruling that petitioner, as an officer of the corporation, is personally and civilly liable to the private respondent for the value of the two checks.[8]

Petitioner asserts that *BP Blg*. 22 merely pertains to the criminal liability of the accused and that the corporation, which has a

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[5] *Id*. at 87-88.

[6] *Id*. at 107.

[7] *Id*. at 40.

[8] *Id*. at 29.

separate personality from its officers, is solely liable for the value of the two checks.

Private respondent counters that petitioner should be held personally liable for both checks. Private respondent alleged that petitioner issued two postdated checks: a personal check in his name for the amount of ₱151,200 and a corporation check under the account of Cruiser Bus Lines and Transport Corporation for the amount of ₱97,500. According to private respondent, petitioner, by issuing his check to cover the obligation of the corporation, became an accommodation party. Under Section 29[9] of the Negotiable Instruments Law, an accommodation party is liable on the instrument to a holder for value. Private respondent adds that petitioner should also be liable for the value of the corporation check because instituting another civil action against the corporation would result in multiplicity of suits and delay.

At the outset, we note that private respondent's allegation that petitioner issued a personal check disputes the factual findings of the MTCC. The MTCC found that the two checks belong to Cruiser Bus Lines and Transport Corporation while the RTC found that one of the checks was a personal check of the petitioner. Generally this Court, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, has no jurisdiction over questions of facts. But, considering that the findings of the MTCC and the RTC are at variance,[10] we are compelled to settle this issue.

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[9] Sec. 29. *Liability of accommodation party*. — An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

[10] See *MEA Builders, Inc. v. Court of Appeals*, G.R. No. 121484, January 31, 2005, 450 SCRA 155, 165.

A perusal of the two check return slips[11] in conjunction with the Current Account Statements[12] would show that the check for ₱151,200 was drawn against the current account of Claude Bautista while the check for ₱97,500 was drawn against the current account of Cruiser Bus Lines and Transport Corporation. Hence, we sustain the factual finding of the RTC.

Nonetheless, we find the appellate court in error for affirming the decision of the RTC holding petitioner liable for the value of the checks considering that petitioner was acquitted of the crime charged and that the debts are clearly corporate debts for which only Cruiser Bus Lines and Transport Corporation should be held liable.

Juridical entities have personalities separate and distinct from its officers and the persons composing it.[13] Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice.[14] These situations, however, do not exist in this case. The evidence shows that it is Cruiser Bus Lines and Transport Corporation that has obligations to Auto Plus Traders, Inc. for tires. There is no agreement that petitioner shall be held liable for the corporation's obligations in his personal capacity. Hence, he cannot be held liable for the value of the two checks issued in payment for the corporation's obligation in the total amount of ₱248,700.

Likewise, contrary to private respondent's contentions, petitioner cannot be considered liable as an accommodation party for Check No. 58832. Section 29 of the Negotiable Instruments Law defines an accommodation party as a person

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[11] *Rollo*, pp. 70, 71.

[12] *Id*. at 68, 72.

[13] *Construction & Development Corporation of the Philippines v. Cuenca*, G.R. No. 163981, August 12, 2005, 466 SCRA 714, 727.

[14] See *Jardine Davies, Inc. v. JRB Realty, Inc.*, G.R. No. 151438, July 15, 2005, 463 SCRA 555, 563.

"who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." As gleaned from the text, an accommodation party is one who meets all the three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person.[15] An accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto.[16] The first two elements are present here, however there is insufficient evidence presented in the instant case to show the presence of the third requisite. All that the evidence shows is that petitioner signed Check No. 58832, which is drawn against his personal account. The said check, *dated December 15, 2000*, corresponds to the value of 24 sets of tires received by Cruiser Bus Lines and Transport Corporation on August 29, 2000.[17] There is no showing of when petitioner issued the check and in what capacity. In the absence of concrete evidence it cannot just be assumed that petitioner intended to lend his name to the corporation. Hence, petitioner cannot be considered as an accommodation party.

Cruiser Bus Lines and Transport Corporation, however, remains liable for the checks especially since there is no evidence that the debts covered by the subject checks have been paid.

WHEREFORE, the petition is *GRANTED*. The Decision dated August 10, 2004 and the Resolution dated October 29, 2004 of the Court of Appeals in CA-G.R. CR No. 28464 are *REVERSED and SET ASIDE*. Criminal Case Nos. 52633-03

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[15] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 272-273; *Lim v. Saban*, G.R. No. 163720, December 16, 2004, 447 SCRA 232, 244; *Crisologo-Jose v. Court of Appeals*, G.R. No. 80599, September 15, 1989, 177 SCRA 594, 598.

[16] *Ang v. Associated Bank*, *supra* at 273.

[17] Exhibit "C", Records, p. 114.

and 52634-03 are *DISMISSED*, without prejudice to the right of private respondent Auto Plus Traders, Inc., to file the proper civil action against Cruiser Bus Lines and Transport Corporation for the value of the two checks.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J.[*] and *Brion, J.,* concur.

Tinga, J., joins *J.* Velasco's dissent.

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

With due respect, I register my dissent to the *ponencia* of my esteemed colleague. I submit that petitioner Bautista is civilly liable for the amounts of the two checks he issued; hence, the Court of Appeals' Decision affirming that of the Regional Trial Court should be upheld and the instant petition be dismissed.

To support its position absolving petitioner from civil liability arising from the bad checks, the *ponencia* made the following ratiocination, *viz*:

> Juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. These situations, however, do not exist in this case. The evidence shows that it is Cruiser Bus Lines and Transport Corporation that has obligations to Auto Plus Traders, Inc. for tires. There is no agreement that petitioner shall be held liable for the corporation's obligations in his personal capacity. Hence, he cannot be held liable for the value of the two checks issued in payment for the corporation's obligation in the total amount of ₱248,700.

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[*] In lieu of Associate Justice Conchita Carpio Morales who inhibited herself.

I register the view, however, that the drawer of the bounced checks is civilly liable for the amounts of the checks drawn to pay the said obligations of the corporations for the following reasons:

1. Section 1 of B.P. Blg. 22 is quite unequivocal regarding the liability of the signatory to the check drawn by a corporation, thus:

> x x x Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

One can contend, however, that the aforequoted section does not clearly say the signatory is both criminally and civilly liable for the dishonored checks.

This issue of the civil liability of the signatory was squarely resolved in the case of *Llamado v. Court of Appeals*[1] where it was held:

> Petitioner's argument that he should not be held personally liable for the amount of the check because it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation, is also untenable. The third paragraph of Section 1 of BP Blg. 22 states:
>
> "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act."

In the case of *Lee v. Court of Appeals*,[2] Lee signed a check in the amount of PhP 980,000.00 for the payment of the loan of a company owned by another. The check was dishonored due to "account closed." Lee was made civilly liable for the check even though he issued the check in payment of the obligation of a company, thus:

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[1] G.R. No. 99032, March 26, 1997, 270 SCRA 423, 431.

[2] G.R. No. 145498, January 17, 2005, 448 SCRA 455, 477.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the following MODIFICATIONS: The sentence of imprisonment is deleted. Instead, petitioner [Lee] is ordered to pay a fine of ₱200,000.00, subject to subsidiary imprisonment in case of insolvency pursuant to Article 39 of the Revised Penal Code; and petitioner is ordered to pay the private complainant the amount of ₱980,000.00 with 12% legal interest *per annum* from the date of finality of herein judgment. (Emphasis supplied.)

2. The civil aspect is deemed instituted with the criminal case. To require the payee to institute a civil case against the corporation for the amount of the bad check would lead to multiplicity of suits. In addition, this will unduly burden the offended party since Rule 141 requires the payment of filing fees for a crime involving a breach of BP Blg. 22. A second case, this time a civil case against the corporation, will expose the offended party to the payment of filing fees for the second time.

Lastly, even assuming *arguendo* that the petitioner is not liable for the obligation of the corporation, yet he should at least be made liable for the amount of PhP 151,200 which was covered by his personal check according to the *ponencia*. Responsibility under BP Blg. 22 is personal to the accused and Sec. 1 of said law is clear that the person who actually signed the bad check is liable.

I, THEREFORE, VOTE TO DISMISS THE PETITION.

THIRD DIVISION

[G.R. No. 167403. August 6, 2008]

MAKATI INSURANCE CO., INC., *petitioner*, *vs*. **HON. WILFREDO D. REYES, as Presiding Judge of the Regional Trial Court of Manila, Branch 36, RUBILLS INTERNATIONAL, INC., TONG WOON SHIPPING PTE LTD., and ASIAN TERMINALS, INC.,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PERIOD OF ORDINARY APPEAL. —** Rule 41, Section 3 of the 1997 Rules of Civil Procedure states: SEC. 3. *Period of ordinary appeal*. The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.

2. **ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF RULE, PROPER IN THE INTEREST OF SUBSTANTIAL JUSTICE; "FRESH PERIOD RULE," ELUCIDATED; THAT PARTY WHO AVAILED MOTION FOR RECONSIDERATION, ALLOWED TO APPEAL WITHIN 15 DAYS FROM DENIAL OF MOTION. —** Propitious to petitioner is *Neypes v. Court of Appeals*, promulgated on 14 September 2005 while the present Petition was already pending before us. In *Neypes,* we pronounced that: 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 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. Rules of Procedure are mere tools designed to facilitate the attainment of justice; their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be eschewed. We justified in *Neypes* that: In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause. The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more. Hence, in the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance may be relaxed. With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.

3. **ID.; ID.; ID.; ID.; ID.; "FRESH PERIOD RULE," JUSTIFIED. —** The "fresh period rule" is not inconsistent with Rule 41, Section 3 of the Revised Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment **or** final order appealed from." The use of the

disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order," which, in this case is the 17 July 2002 RTC Order denying petitioner's Verified Motion for Reconsideration, received by petitioner on 3 July 2002. Neither does the new rule run counter to the spirit of Section 39 of Batas Pambansa Blg. 129 which shortened the appeal period from 30 days to 15 days to hasten the disposition of cases. The original period of appeal remains and the requirement for strict compliance still applies. The fresh period of 15 days becomes significant only when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment. While we aim to resolve cases with dispatch and to have judgments of courts become final at some definite time, we likewise aspire to deliver justice fairly. The "fresh period rule" finally eradicates the confusion as to when the 15-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of "final order" appealed from. This fresh 15-day period within which to file notice of appeal counted from notice of the denial of the motion for reconsideration may be applied to petitioner's case inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage.

4. **ID.; ID.; ID.; NOT PROPER FOR ORDER DISMISSING AN ACTION WITHOUT PREJUDICE. —** Under the 1997 Rules of Civil Procedure, Rule 41, Section 1(h), thereof expressly provides that no appeal may be taken from an order dismissing an action without prejudice. It may be subject of a special civil action for *certiorari* under Rule 65 of the Rules of Court, as amended by the said 1997 Rules of Civil Procedure. The Court of Appeals, therefore, acted correctly in stating that the Notice of Appeal filed by the petitioner was dismissible.

5. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF. —** The Writ of *Certiorari* is an extraordinary remedy to correct errors of jurisdiction. An act of a court or

tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Be that as it may, it must be emphasized that this practice is applied only under certain exceptional circumstances to prevent unnecessary delay in the administration of justice and so as not to unduly burden the courts.

6. **ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL DUE TO FAULT OF PLAINTIFF. —** Section 3, Rule 17 of the Rules of Court states: SEC. 3. *Dismissal due to fault of plaintiff*. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. We have always been steadfast in ruling that in every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him, considering that any delay in the proceedings entails prolonged anxiety and valuable time wasted.

APPEARANCES OF COUNSEL

Dollete Blanco Ejercito & Associates for petitioner.
Montilla Law Office for ATI.
Vergel De Dios Maritime Law Office for Rubills Int'l., Inc.

DECISION

CHICO-NAZARIO, *J*.:

Assailed in this Petition for Review under Rule 45[1] of the Revised Rules of Court are (1) the Decision[2] dated 12 August 2004 of the Court of Appeals dismissing the petition filed in CA-G.R. SP No. 74220 by herein petitioner Makati Insurance Co., Inc., and affirming the Order[3] dated 2 October 2002 of the Regional Trial Court (RTC) of Manila, Branch 36, in Civil Case No. 97-84952, which dismissed petitioner's Notice of Appeal for having been filed three days beyond the reglementary period; and (2) the Resolution[4] dated 17 February 2005 of the Court of Appeals in the same case denying petitioner's Motion for Reconsideration of its earlier Decision.

The generative facts of the present Petition are as follows.

Petitioner filed before the RTC a Complaint[5] against private respondents Rubills International, Inc., Tong Woon Shipping PTE., LTD., and Asian Terminals, Inc. for damages arising from breach of contract of carriage. In its Complaint, petitioner alleged that:

> 3.1 [Herein private respondents] Rubills International, Inc. and Tong Woon Shipping Pte. Ltd. [Rubills for brevity], were and are the owners, operators, charterers, bailees, representatives, or agents of several ocean going vessels, engaged in ocean carriage to and from Philippine ports in foreign trade, one of which is the vessel M/V "Cherry" a common carrier, bound to observe extraordinary diligence in the care and custody of goods while in its protective custody.

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[1] Appeal by *Certiorari* to the Supreme Court.

[2] Penned by Associate Justice Noel G. Tijam with Associate Justices Jose L. Sabio, Jr. and Perlita J. Tria Tirona, concurring. *Rollo*, pp. 17-22.

[3] Records, p. 170.

[4] *Rollo*, p. 24.

[5] Records, p. 1.

> 3.2 [Herein private respondent] Asian Terminals, Inc. [ATI] was and is the arrastre operator at the port of Manila and as such was charged and obligated with the duty of receiving cargoes discharged from the vessels docking at the port of Manila, of safekeeping and taking good care of the same while in its protective custody, and thereafter delivering the same to the respective consignees and/or consignee's representatives.

4.0 On or about August 11, 1996, the [private respondents] Rubills and Tong Woon vessel M/V "CHERRY" arrived in Manila and docked at Pier 15 South Harbor, Manila, and therein completely unloaded on September 9, 1996 a shipment of 120MT Red Beans and 153.00MT Cattle Meat Colloid covered by Bill of Lading dated August 01, 1996, a photocopy of which is herewith attached as Annex "A" and made an integral part hereof;

5.0 It was found out after the inspection of the subject shipment that eighty four (84) ton bags of the shipment were in apparent damaged condition, partly to badly wet and loose/torn on sides and/or ends with spillages/wettages to contents apparent. x x x.

x x x x x x x x x

6.0 The aforesaid losses and damages sustained by the subject shipment were directly caused and brought about by the wanton fault, gross negligence, malevolent mishandling and culpable disregard, recreance and/or breach of contractual obligations of all or either of the [private respondents] as common carrier and arrastre operator respectively, and as a result of which the owner/assured/consignee Silver Allies Trading International sustained damages and losses in the total sum of Four Hundred Twelve Thousand Two Hundred Fifty Three & 91/100 Pesos (₱412,253.91) for which [herein petitioner]-insurer paid the consignee-assured. Thus, [petitioner] was subrogated into the rights and interests of the consignee-assured relative to the said losses and damages sustained by the subject shipment;

7.0 Demands were lodged against the [private respondents] for compensation of the amount paid by the [petitioner] to the consignee-assured, but the [private respondents] failed, ignored and refused to heed the same to the damage and prejudice of the [petitioner];

8.0 [Private respondents] are guilty of wanton fault, gross negligence, malevolent mishandling and culpable disregard of their

contractual obligations in bringing about and contumaciously causing the losses and damages to the said shipment x x x.[6]

Petitioner prayed in its Complaint that:

[J]udgment be rendered ordering the [herein private respondents], jointly and severally or whichever may be found liable, to pay [herein petitioner]:

a. Actual damages in the amount of ₱412,253.91 with legal interest from the date of the filing of the complaint until fully paid;

b. Exemplary damages in the sum of at least ₱20,000.00 or as may be found proper by this Honorable Court;

c. Attorney's fees in the sum equivalent to twenty five percent (25%) of the principal claim of ₱103,063.47; and

d. Litigation expenses in the sum of at least ₱10,000.00 or as may be proven, plus costs of suit.[7]

After the issues were joined, the case was set for pre-trial conference. For the failure of petitioner's counsel to appear at the scheduled pre-trial conference on 19 November 2001, RTC Presiding Judge Wilfredo D. Reyes (Judge Reyes) dismissed the case without prejudice. His Order of even date reads:

On third call of this case at 10:40 o'clock this morning, only counsels for [herein private respondents] Rubills International, Inc. and Asian Terminals, Inc. appeared. There was no appearance for [herein petitioner] despite due notice.

Respective counsels of [private respondents] moved for the dismissal of the case on the following grounds:

1. For failure of [petitioner] to properly appear for pre-trial conference on September 5, 2001 considering that its counsel and/ or representative did not have the requisite authority.

2. For failure of [petitioner] to appear at the pre-trial conference at the proper time set on October 16, 2001 although [petitioner]'s counsel came in after [private respondents]' counsel had left the

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[6] *Id.* at 2-4.

[7] *Id.* at 5.

court room and the case re-set for continuation of pre-trial on November 19, 2001, and

3. For failure of [petitioner]'s counsel to appear at today's pre-trial.

It appearing that [petitioner]'s counsel has been given ample opportunity to appear in the pre-trial conference of this case with the requisite authority for its counsel and/or representative and that [petitioner]'s counsel has failed to so appear for pre-trial conference, and upon motion of [private respondents]' counsel, this case is dismissed without prejudice.

WHEREFORE, the case at bar is dismissed without prejudice. No costs.[8]

On 29 November 2001, petitioner received the Order dated 19 November 2001 dismissing its case. On 4 December 2001, petitioner filed its Verified Motion for Reconsideration[9] alleging that sickness prevented its counsel from attending the pre-trial conference. On 3 July 2002, petitioner received Judge Reyes's Order dated 17 June 2002 denying its Verified Motion for Reconsideration.[10]

According to the 17 June 2002 RTC Order:

After a careful review of the grounds relied upon by [herein petitioner]'s counsel in his verified motion for reconsideration dated December 1, 2001, the Court has no other recourse but to deny the same as the grounds of said motion for reconsideration are not impressive so as to convince the Court to reverse its Order of November 19, 2001,

WHEREFORE, [petitioner]'s motion for reconsideration is DENIED.[11]

Petitioner received notice of the afore-mentioned Order on 3 July 2002.

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[8] *Id.* at 114-115.

[9] *Id.* at 119.

[10] *Id.* at 149.

[11] *Id.*

On 17 July 2002, petitioner filed a Notice of Appeal,[12] which was promptly opposed by private respondents for having been filed out of time.[13] Petitioner countered that its failure to file the Notice of Appeal on time was due to its counsel's inadvertence in computing the appeal period. The inadvertence was allegedly due to the fact that its Verified Motion for Reconsideration was filed by registered mail, and the messenger who mailed it failed to attach to the records of the case the postal receipt showing the date the said motion was mailed.[14] Petitioner's counsel, therefore, was unable to determine correctly when petitioner's period to appeal was interrupted by the filing of its Verified Motion for Reconsideration and how many more days were left in said period when its Motion was denied.

On 23 September 2002, petitioner filed a Motion to Admit Notice of Appeal,[15] alleging it had no intention to delay the resolution of the case; it had a meritorious case; and its Notice of Appeal should be granted pursuant to the *dictum* that "courts should not place undue importance on technicalities, when by so doing, substantial justice is sacrificed."

On 2 October 2002, Judge Reyes issued his Order[16] dismissing petitioner's Notice of Appeal for being filed three days beyond the 15-day reglementary period. In so ruling, Judge Reyes held that pursuant to Section 3, Rule 41 *vis-à-vis* Section 2, Rule 22 of the Revised Rules of Court, the period to appeal is interrupted by a timely motion for reconsideration. Petitioner filed its Verified Motion for Reconsideration five days after receiving the Order dismissing the case without prejudice. Excluding the day the said motion was filed, petitioner had only 11 days left to file a notice of appeal. Petitioner received the Order of 17 June 2002 denying its Verified Motion for

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[12] *Id.* at 150.

[13] *Rollo*, p. 154.

[14] *Id.* at 157.

[15] Records, p. 166.

[16] *Rollo*, p. 170.

Reconsideration on 3 July 2002. Accordingly, it had only until 14 July 2002 to file a Notice of Appeal. Petitioner, however, filed its Notice of Appeal on 17 July 2002.[17] Judge Reyes, therefore, held:

WHEREFORE, plaintiff's notice of appeal is ordered dismissed as it was filed three (3) days beyond the reglementary period.[18]

Petitioner then filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court questioning the 2 October 2002 RTC Order dismissing its Notice of Appeal. The Petition, however, was denied by the Court of Appeals based on the following reasons:

[F]rom an order dismissing an action without prejudice, the remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65, or to re-file the case. On this score, therefore, petitioner's Notice of Appeal is clearly dismissible.

Even assuming *arguendo* that appeal is petitioner's proper remedy, it should still be denied for having been filed out of time. x x x.[19]

The Court of Appeals held:

WHEREFORE, the instant petition is hereby DISMISSED, and the assailed Order dated October 2, 2002 AFFIRMED.[20]

The Motion for Reconsideration filed by the petitioner was denied by the Court of Appeals in a Resolution dated 17 February 2005.

In the Petition at bar, petitioner insists that:

EXTRAORDINARY CIRCUMSTANCES ATTENDANT TO THE CASE AT BAR WARRANT THE LIBERAL APPLICATION OF THE RULES.[21]

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

[18] Records, p. 174.

[19] *Rollo*, p. 19.

[20] *Id.* at 21.

[21] *Rollo*, p. 109.

We first hew our attention to the main issue for our resolution: whether the Notice of Appeal filed by petitioner was filed out of time.

Rule 41, Section 3 of the 1997 Rules of Civil Procedure states:

> SEC. 3. *Period of ordinary appeal*. The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from.[22] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.[23]

Propitious to petitioner is *Neypes v. Court of Appeals*,[24] promulgated on 14 September 2005 while the present Petition was already pending before us. In *Neypes,* we pronounced that:

> 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.

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[22] *Nuñez v. GSIS Family Bank*, G.R. No. 163988, 17 November 2005, 475 SCRA 305, 319.

[23] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc*., G.R. No. 161110, 30 March 2006, 485 SCRA 632, 649.

[24] G.R. No. 141524, 14 September 2005, 469 SCRA 633, 644-645.

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 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. (Emphasis ours.)

Rules of Procedure are mere tools designed to facilitate the attainment of justice; their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be eschewed.[25]

We justified in *Neypes* that:

In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.

The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.[26]

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[25] *San Miguel Corp. v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 414.

[26] *Neypes v. Court of Appeals, supra* note 24 at 643-644.

Hence, in the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance may be relaxed.[27]

With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.[28]

The "fresh period rule" is not inconsistent with Rule 41, Section 3 of the Revised Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment **or** final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies.[29] Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order," which, in this case is the 17 July 2002 RTC Order denying petitioner's Verified Motion for Reconsideration, received by petitioner on 3 July 2002.

Neither does the new rule run counter to the spirit of Section 39 of Batas Pambansa Blg. 129 which shortened the appeal period from 30 days to 15 days to hasten the disposition of cases. The original period of appeal remains and the requirement for strict compliance still applies. The fresh period of 15 days becomes significant only when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment. While we aim to resolve cases with dispatch and to have judgments of courts become

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[27] *De los Santos v. Vda de Mangubat*, G.R. No. 149508, 10 October 2007, 535 SCRA 411, 419.

[28] *Active Realty and Development Corporation v. Fernandez,* G.R. No. 157186, 19 October 2007, 537 SCRA 116, 129.

[29] *Neypes v. Court of Appeals*, *supra* note 24 at 645-646.

final at some definite time, we likewise aspire to deliver justice fairly.[30]

The "fresh period rule" finally eradicates the confusion as to when the 15-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of "final order" appealed from.[31]

Taking our bearings from *Neypes*, in *Sumaway v. Urban Bank, Inc.*,[32] we set aside the denial of a notice of appeal which was purportedly filed five days late. With the fresh period rule, the 15-day period within which to file the notice of appeal was counted from notice of the denial of the therein petitioner's motion for reconsideration.

We followed suit in *Elbiña v. Ceniza*,[33] wherein we applied the principle granting a fresh period of 15 days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

Thereafter, in *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands,*[34] we held that a party litigant may now file his notice of appeal either within fifteen days from receipt of the original decision or within fifteen days from the receipt of the order denying the motion for reconsideration.

In *De los Santos v. Vda de Mangubat*,[35] we applied the same principle of "fresh period rule," expostulating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception

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[30] *Id.*

[31] *Id.*

[32] G.R. No. 142534, 27 June 2006, 493 SCRA 99.

[33] G.R. No. 154019, 10 August 2006, 498 SCRA 438.

[34] G.R. No. 154034, 5 February 2007, 514 SCRA 223, 226-227.

[35] *De los Santos v. Vda. de Mangubat*, *supra* note 27 at 422.

of a retroactive law, or the general rule against the retroactive operation of statutes. The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights.

We thus hold that when herein petitioner filed its notice of appeal on 17 July 2002, the same was seasonably filed within the fresh period of 15 days, counted from 3 July 2002, the date it received the denial of its Verified Motion for Reconsideration.

This fresh 15-day period within which to file notice of appeal counted from notice of the denial of the motion for reconsideration may be applied to petitioner's case inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage. In *Republic v. Court of Appeals*,[36] involving A.M. No. 00-2-03-SC, which provided for the rule that the 60-day period within which to file a petition for *certiorari* shall be reckoned from receipt of the order denying the motion for reconsideration, we stated that rules of procedure "may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."

We also take note of an important declaration made by the Court of Appeals in its assailed Decision that even if petitioner's Notice of Appeal was considered filed on time, it was dismissible for being the wrong remedy.

It bears repeating that the RTC dismissed Civil Case No. 97-84952 without prejudice. The rules[37] provide:

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[36] 447 Phil. 385, 393-394 (2003).

[37] 1997 Rules of Civil Procedure.

Rule 41
APPEAL FROM THE REGIONAL
TRIAL COURTS

Section 1. x x x

No appeal may be taken from:

x x x x x x x x x

(h) An order dismissing an action without prejudice.

Indeed, under the 1997 Rules of Civil Procedure, Rule 41, Section 1(h), thereof expressly provides that no appeal may be taken from an order dismissing an action without prejudice. It may be subject of a special civil action for *certiorari* under Rule 65 of the Rules of Court, as amended by the said 1997 Rules of Civil Procedure. The Court of Appeals, therefore, acted correctly in stating that the Notice of Appeal filed by the petitioner was dismissible.

Even if in the interest of substantial justice, we consider the Notice of Appeal as a Petition for *Certiorari* under Rule 65 of the Rules of Court, still no grave abuse of discretion may be attributed to the RTC in dismissing Civil Case No. 97-84952.

The Writ of *Certiorari* is an extraordinary remedy to correct errors of jurisdiction. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Be that as it may, it must be emphasized that this practice is applied only under certain exceptional circumstances to prevent unnecessary delay in the administration of justice and so as not to unduly burden the courts.[38]

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[38] *Yee v. Bernabe,* G.R. No. 141393, 19 April 2006, 487 SCRA 385, 393.

In the present case, Civil Case No. 97-84952 was initially scheduled for pre-trial conference on 17 April 2000.[39] By agreement of the parties, the pre-trial conference was re-set to 8 June 2000.[40] Again, by agreement of the parties, the pre-trial conference was re-set to 6 July 2000,[41] only to be re-set once more to 3 August 2000.[42] On 3 August 2000, petitioner filed a motion to re-set pre-trial conference to 11 September 2000.[43] On 11 September 2000, petitioner's counsel was not present; thus, the pre-trial conference was cancelled and re-set to 17 October 2000.[44] On 17 October 2000, the parties manifested that they might settle the case amicably so the pre-trial conference on said date was cancelled.[45] The pre-trial conference was re-set to 28 November 2000[46] and again to 17 January 2001 upon motion of private respondent Asian Terminals, Inc.[47] Cancellation and re-setting of the pre-trial conference also occurred to 28 March 2001,[48] 19 April 2001,[49] 20 June 2001,[50] 31 July 2001.[51] Then again on 5 September 2001,[52] on the ground that petitioner's counsel/representative did not have the requisite authority, and on 15 October 2001 because petitioner's counsel failed to arrive at the proper time.[53] When petitioner's counsel again failed to

[39] Records, p. 83.

[40] *Id.* at 84.

[41] *Id.* at 85.

[42] *Id.* at 86.

[43] *Id.* at 90.

[44] *Id.* at 92.

[45] *Id.* at 94.

[46] *Id.* at 95.

[47] *Id.* at 98.

[48] *Id.* at 101.

[49] *Id.* at 103.

[50] *Id.* at 105.

[51] *Id.* at 107.

[52] *Id.* at 110.

[53] *Id.* at 114.

attend the pre-trial conference on 19 November 2001, the RTC finally ordered the dismissal of the case without prejudice.

All these postponements truly manifest a lack of interest to prosecute on the part of the petitioner as found by the RTC. Section 3, Rule 17 of the Rules of Court states:

> SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

We have always been steadfast in ruling that in every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him, considering that any delay in the proceedings entails prolonged anxiety and valuable time wasted.[54]

IN ALL, we find that while it is true that the petitioner's Notice of Appeal was timely filed based on our ruling in *Neypes*, said Notice of Appeal was the wrong remedy. Even if considered as a Petition for *Certiorari* under Rule 65 of the Rules of Court, the same has no merit as discussed above.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated 12 August 2004 and Resolution dated 17 February 2005 are *AFFIRMED*. Costs against petitioner.

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[54] *Ko v. Philippine National Bank,* G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167899. August 6, 2008]

WILLIE ONG, doing business under the name and style EXCEL Fitness Center, *petitioner, vs.* **LUCIA N. BASCO (and husband ANTONIO BASCO, as nominal party),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; DISQUALIFICATION OF JUDICIAL OFFICERS; OBJECTION THAT JUDGE IS DISQUALIFIED, HOW MADE AND EFFECT; IN CASE AT BAR, JUDGMENT ON THE MERITS CAME AHEAD OF THE RULING ON THE MOTION FOR INHIBITION OF DECIDING JUDGE. —** Under the circumstances of the case, *i.e.,* after a judgment had been rendered by the RTC and an appeal therefrom had been perfected, petitioner's resort to a special civil action for *certiorari* is no longer proper because there exists plain, speedy and adequate remedy, *i.e.* an ordinary appeal. Section 2, Rule 137 of the Rules of Court is controlling: SEC. 2. *Objection that judge disqualified, how made and effect.*—If it be claimed that an official is disqualified from sitting as [provided in Section 1 hereof], the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw, therefrom in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but ***no***

appeal or stay shall be allowed from, or by means of, his decision in favor of his own competency, until after final judgment in the case. Here the appeal affords petitioner adequate and expeditious relief because the issue of whether the trial judge acted correctly or erroneously on her competency to take cognizance of a case could be raised on appeal from the main decision. While the restriction in the Rule against appeal or stay of the proceedings where the trial judge rules in favor of her competency to sit in a case is not an absolute rule in civil cases, and has not precluded a resort *in appropriate cases* to the special civil action of *certiorari* before the higher courts for determination, this will apply only in cases where the denial of the motion for inhibition or disqualification was made ahead of the trial court's judgment on the merits and there is a clear showing that the case is an exceptional one. This is not true in the case of the present petitioner. In this case, a judgment on the merits has already been rendered by Judge Reyes before she issued the Order dated September 13, 2004, deciding in favor of her competency and denying petitioner's motion for reconsideration of the April 23, 2004 RTC Decision. Judge Reyes acted judiciously when she decided to sit in Civil Case No. 98-92072 and proceeded to render the decision in the case, and later resolved petitioner's motion for reconsideration. It was her official duty to do so.

2. **ID.; ID.; UNFOUNDED ASSUMPTIONS OF BIAS, NOT SUFFICIENT. —** We cannot indulge on the unfounded assumptions of bias, prejudice and partiality hurled by petitioner against Judge Reyes. While those grounds have been recognized as valid reasons for the voluntary inhibition of a judge under Section 1, paragraph 2, of Rule 137 of the Rules of Court, the rudimentary rule is that the mere suspicion that a judge is partial is not enough. Petitioner cannot validly argue that Judge Reyes acted with bias and partiality simply because Judge Reyes decided the case against him. The instant case does not fall under the instances covered by the rule on the mandatory disqualification of judges as enumerated in Section 1, paragraph 1 of Rule 137 of the Rules of Court; thus, the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF. —** We must emphasize that the special civil action

for *certiorari* cannot prosper when there are no special circumstances clearly demonstrating the inadequacy of an appeal. As this Court held in *Bristol Myers Squibb,* (*Phils.*), *Inc. v. Viloria*… the settled rule is that a writ of *certiorari* may be granted in cases where, despite availability of appeal after trial, there is at least a *prima facie* showing on the face of the petition and its annexes that: (a) the trial court issued the order with grave abuse of discretion amounting to lack of or in excess of jurisdiction; (b) appeal would not prove to be a speedy and adequate remedy; (c) where the order is a patent nullity; (d) the decision in the present case will arrest future litigations; and (e) for certain considerations such as public welfare and public policy. To be a disqualifying circumstance, the grounds relied upon must be shown to have stemmed from an extrajudicial source and resulted in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Since petitioner failed to show any strong ground of bias and partiality on the part of Judge Reyes, there can be no irregularity or grave abuse of discretion amounting to lack or excess of jurisdiction to speak of that would merit the filing of a *certiorari* case.

APPEARANCES OF COUNSEL

Ubano Ancheta Sianghio & Lozada for petitioner.
Thelma A. Jader-Manalo for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Resolution[1] dated March 16, 2005 of the Court of Appeals in CA-G.R. SP No. 87699 which had dismissed petitioner's petition for *certiorari*.

It appears from the records that on April 23, 2004, the Regional Trial Court (RTC) of Manila, Branch 43, rendered a Decision[2]

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[1] *Rollo,* pp. 42-45. Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring.

[2] *Id.* at 178-185. Penned by Acting Presiding Judge Amor A. Reyes.

in Civil Case No. 98-92072 ordering petitioner Willie Ong, doing business under the name and style EXCEL Fitness Center, to pay respondent Lucia N. Basco the amount of ₱200,000 as moral damages, ₱150,000 as exemplary damages plus 10% of the total amount as attorney's fees.

On June 23, 2004, Ong filed a Motion for Reconsideration.[3] He also filed on July 16, 2004, a Motion for Inhibition[4] seeking the voluntary inhibition of the trial judge, Judge Amor A. Reyes, on the grounds of bias and partiality in favor of Basco.

In an Order[5] dated September 13, 2004, Judge Reyes denied Ong's motion for reconsideration as well as his motion for inhibition.

On October 9, 2004, Ong filed a Notice of Appeal[6] with the RTC. The records of Civil Case No. 98-92072 were elevated to the Court of Appeals and the appeal was docketed as CA-G.R. No. CV-83646.[7]

On December 14, 2004, Ong filed with the Court of Appeals a Petition for *Certiorari*[8] under Rule 65 of the Rules of Court. The case was docketed as CA-G.R. SP No. 87699. Ong alleged that Judge Reyes acted without or in excess of her jurisdiction in denying his motion for inhibition. He also imputed bias and partiality against Judge Reyes when the latter appreciated the case against him. He further claimed that the decision was rendered with indecent haste because Judge Reyes never presided in any hearing as she took over the case only when it was in the memorandum stage.

On March 16, 2005, the Court of Appeals issued the assailed Resolution dismissing CA-G.R. SP No. 87699 for lack of merit.

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[3] *Id*. at 186-218.

[4] *Id*. at 219-226.

[5] *Id*. at 232-235.

[6] *Id*. at 236-238.

[7] *Id*. at 43.

[8] CA *rollo*, pp. 11-35.

It ruled that *certiorari* lies only when there is no appeal nor any plain, speedy or adequate remedy. In Ong's case, he had in fact availed of the remedy of appeal, adequate to deal with any factual or legal question. It further ruled that absent any evidence of bad faith, malice, or corrupt purpose, repeated adverse rulings on a litigant are not bases for disqualification of a judge on the grounds of bias and prejudice. Moreover, a petition for *certiorari*, in order to prosper, must be based on jurisdictional grounds; any error committed in the exercise thereof will only amount to an error of judgment, reviewable or correctible by ordinary appeal. [9] The decretal portion of the Courts of Appeals' Resolution reads,

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

SO ORDERED.[10]

Hence, this petition wherein Ong alleges that the Court of Appeals erred in dismissing his petition for *certiorari* because:

I.

SPECIAL CIVIL ACTION OF *CERTIORARI* WAS THE PROPER REMEDY AGAINST THE DENIAL OF THE MOTION FOR INHIBITION...

II.

UNDER THE SPECIAL CIRCUMSTANCES OF THE CASE, THE REMEDY OF APPEAL WAS INADEQUATE TO RELIEVE PETITIONER FROM THE INJURIOUS EFFECTS OF THE DENIAL OF THE MOTION FOR INHIBITION.[11]

Essentially, the issue is: Did the Court of Appeals err when it ruled that a petition for *certiorari* under Rule 65 of the Rules of Court was not the proper remedy from the denial of petitioner's motion for inhibition?

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[9] *Rollo*, pp. 44-45.

[10] *Id*. at 45.

[11] *Id*. at 318.

Petitioner contends that a special civil action for *certiorari* was the proper remedy. He argues that the issue he raised before the Court of Appeals involved an error of jurisdiction on the part of Judge Reyes, thus, correctible only by a special civil action for *certiorari*. He maintains that Judge Reyes exhibited bias when she simultaneously denied his motions for reconsideration and inhibition. He further contends that the factual findings of Judge Reyes were baseless and erroneous. Assuming *arguendo* that appeal was the proper remedy, he avers that it is inadequate to afford him relief.

Respondent counters that *certiorari* was not the proper remedy from the denial of petitioner's motion for inhibition. First, she points out that petitioner did not file a motion for reconsideration on the denial of his motion for inhibition before filing the petition for *certiorari* with the Court of Appeals. Second, she stresses that Judge Reyes acted within her jurisdiction and an alleged misapprehension of facts, if any, is a mere error of judgment correctible by appeal. She asserts that partiality and bad faith of a judge cannot be presumed but must be proven by clear and convincing evidence. Third, she contends that petitioner is guilty of forum-shopping when he availed both remedies of appeal and *certiorari* in assailing the RTC Order which denied his motions for reconsideration and inhibition.

After carefully considering the parties' contentions, we are in agreement that the petition lacks merit.

First of all, under the circumstances of the case, *i.e.,* after a judgment had been rendered by the RTC and an appeal therefrom had been perfected, petitioner's resort to a special civil action for *certiorari* is no longer proper because there exists plain, speedy and adequate remedy, *i.e.* an ordinary appeal. Section 2, Rule 137 of the Rules of Court is controlling:

SEC. 2. *Objection that judge disqualified, how made and effect*.—If it be claimed that an official is disqualified from sitting as [provided in Section 1 hereof], the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or

withdraw, therefrom in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but ***no appeal or stay shall be allowed from, or by means of, his decision in favor of his own competency, until after final judgment in the case.*** (Emphasis supplied.)

Here the appeal affords petitioner adequate and expeditious relief because the issue of whether the trial judge acted correctly or erroneously on her competency to take cognizance of a case could be raised on appeal from the main decision.[12]

Second, while the restriction in the Rule against appeal or stay of the proceedings where the trial judge rules in favor of her competency to sit in a case is not an absolute rule in civil cases, and has not precluded a resort *in appropriate cases* to the special civil action of *certiorari* before the higher courts for determination, this will apply only in cases where the denial of the motion for inhibition or disqualification was made ahead of the trial court's judgment on the merits and there is a clear showing that the case is an exceptional one. This is not true in the case of the present petitioner.

In this case, a judgment on the merits has already been rendered by Judge Reyes before she issued the Order dated September 13, 2004, deciding in favor of her competency and denying petitioner's motion for reconsideration of the April 23, 2004 RTC Decision. Judge Reyes acted judiciously when she decided to sit in Civil Case No. 98-92072 and proceeded to render the decision in the case,[13] and later resolved petitioner's motion for reconsideration. It was her official duty to do so.

Third, we cannot indulge on the unfounded assumptions of bias, prejudice and partiality hurled by petitioner against Judge Reyes. While those grounds have been recognized as valid reasons for the voluntary inhibition of a judge under Section 1,

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[12] *Paredes v. Gopengco,* No. L-23710, September 30, 1969, 29 SCRA 688, 694-695.

[13] *People v. Moreno*, 83 Phil 286, 294 (1949).

paragraph 2,[14] of Rule 137 of the Rules of Court, the rudimentary rule is that the mere suspicion that a judge is partial is not enough.[15] Petitioner cannot validly argue that Judge Reyes acted with bias and partiality simply because Judge Reyes decided the case against him.

Fourth, the instant case does not fall under the instances covered by the rule on the mandatory disqualification of judges as enumerated in Section 1, paragraph 1[16] of Rule 137 of the Rules of Court; thus, the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.[17]

We must emphasize that the special civil action for *certiorari* cannot prosper when there are no special circumstances clearly demonstrating the inadequacy of an appeal. As this Court held in *Bristol Myers Squibb,* (*Phils.*)*, Inc. v. Viloria*[18]

…the settled rule is that a writ of *certiorari* may be granted in cases where, despite availability of appeal after trial, there is at least

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[14] SECTION 1. *Disqualification of judges.*— …

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[15] *Te v. Court of Appeals,* G.R. No. 126746, November 29, 2000, 346 SCRA 327, 339-340.

[16] SECTION 1. *Disqualification of judges.*— No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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[17] *Chin v. Court of Appeals,* G.R. No. 144618, August 15, 2003, 409 SCRA 206, 212.

[18] G.R. No. 148156, September 27, 2004, 439 SCRA 202.

a *prima facie* showing on the face of the petition and its annexes that: (a) the trial court issued the order with grave abuse of discretion amounting to lack of or in excess of jurisdiction; (b) appeal would not prove to be a speedy and adequate remedy; (c) where the order is a patent nullity; (d) the decision in the present case will arrest future litigations; and (e) for certain considerations such as public welfare and public policy.[19]

To be a disqualifying circumstance, the grounds relied upon must be shown to have stemmed from an extrajudicial source and resulted in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[20] Since petitioner failed to show any strong ground of bias and partiality on the part of Judge Reyes, there can be no irregularity or grave abuse of discretion amounting to lack or excess of jurisdiction to speak of that would merit the filing of a *certiorari* case.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Resolution dated March 16, 2005 of the Court of Appeals in CA-G.R. SP No. 87699 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[19] *Id.* at 211.

[20] *Chin v. Court of Appeals, supra* at 214.

THIRD DIVISION

[G.R. No. 168402. August 6, 2008]

ABOITIZ SHIPPING CORPORATION, *petitioner, vs.* **INSURANCE COMPANY OF NORTH AMERICA,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; FOREIGN CORPORATION NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES; RULE ON FILING SUIT IN LOCAL COURTS; CASE AT BAR. — A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts.** Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits. It may, however, bring suits on isolated business transactions, which is not prohibited under Philippine law. Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license *per se*, which bars a foreign corporation from access to our courts. In any case, We uphold the CA observation that while it was the ICNA UK Limited which issued the subject marine policy, the present suit was filed by the said company's authorized agent in Manila. It was the domestic corporation that brought the suit and not the foreign company. Its authority is expressly provided for in the open policy which includes the ICNA office in the Philippines as one of the foreign company's agents.

2. **ID.; INSURANCE LAW; POLICY MAY BE FRAMED THAT IT WILL INURE TO THE BENEFIT OF WHOSOEVER MAY BECOME THE OWNER OF THE INTEREST INSURED; CASE AT BAR. —** The terms of the Open Policy authorize the filing of any claim on the insured goods, to be brought against ICNA UK, the company who issued the insurance, or against any of its listed agents worldwide. MSAS

accepted said provision when it signed and accepted the policy. The acceptance operated as an acceptance of the authority of the agents. A formal indorsement of the policy to the agent in the Philippines was unnecessary for the latter to exercise the rights of the insurer. The Open Policy expressly provides that: The Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure MSAS Cargo International Limited &/or Associates &/or Subsidiary Companies in behalf of the title holder: — Loss, if any, payable to the Assured or Order. The policy benefits any subsequent assignee, or holder, including the consignee, who may file claims on behalf of the assured. This is in keeping with Section 57 of the Insurance Code which states: A policy may be so framed that it *will inure to the benefit of whosoever*, during the continuance of the risk, *may become the owner of the interest insured.*

3. **ID.; ID.; ID.; RIGHT OF SUBROGATION; LIMITATIONS. — Respondent's cause of action is founded on it being subrogated to the rights of the consignee of the damaged shipment.** The right of subrogation springs from Article 2207 of the Civil Code, which states: Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. As this Court held in the case of *Pan Malayan Insurance Corporation v. Court of Appeals,* payment by the insurer to the assured operates as an equitable assignment of all remedies the assured may have against the third party who caused the damage. Subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer. Upon payment to the consignee of indemnity for damage to the insured goods, ICNA's entitlement to subrogation equipped it with a cause of action against petitioner in case of a contractual breach or negligence. This right of subrogation, however, has its limitations. First,

both the insurer and the consignee are bound by the contractual stipulations under the bill of lading. Second, the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. If by its own acts after receiving payment from the insurer, the insured releases the wrongdoer who caused the loss from liability, the insurer loses its claim against the latter.

4. **ID.; ID.; NOTICE OF LOSS, A CONDITION PRECEDENT TO ACTION FOR LOSS OR THE RIGHT TO ENFORCE CARRIER'S LIABILITY; CASE AT BAR. — The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Circumstances peculiar to this case lead Us to conclude that the notice requirement was complied with.** As held in the case of *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.,* this notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

5. **ID.; CODE OF COMMERCE; NOTICE OF CLAIM; PERIOD. —** Under the Code of Commerce, the notice of claim must be made within twenty four (24) hours from receipt of the cargo if the damage is not apparent from the outside of the package. For damages that are visible from the outside of the package, the claim must be made immediately. The law provides: Article 366. *Within twenty four hours* following the receipt of the merchandise, the claim against the carrier for damages or average which may be found therein upon opening the packages, may be made, *provided that the indications of the damage or average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.* After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. The periods above, as well as the manner of giving notice may be modified in the terms of the bill of lading, which is the contract between the parties. Stipulations requiring notice of loss or claim for damage as a condition precedent to the right of recovery from a carrier

must be given a reasonable and practical construction, adapted to the circumstances of the case under adjudication, and their application is limited to cases falling fairly within their object and purpose.

6. **ID.; ID.; ID.; ID.; REASONABLE CONSTRUCTION, ALLOWED; CASE AT BAR. —** Provisions specifying a time to give notice of damage to common carriers are ordinarily to be given a reasonable and practical, rather than a strict construction. We give due consideration to the fact that the final destination of the damaged cargo was a school institution where authorities are bound by rules and regulations governing their actions. Understandably, when the goods were delivered, the necessary clearance had to be made before the package was opened. Upon opening and discovery of the damaged condition of the goods, a report to this effect had to pass through the proper channels before it could be finalized and endorsed by the institution to the claims department of the shipping company. The call to petitioner was made two days from delivery, a reasonable period considering that the goods could not have corroded instantly overnight such that it could only have sustained the damage during transit. Moreover, petitioner was able to immediately inspect the damage while the matter was still fresh. In so doing, the main objective of the prescribed time period was fulfilled. Thus, there was substantial compliance with the notice requirement in this case.

7. **CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; EXTRAORDINARY DILIGENCE, REQUIRED; WANTING IN CASE AT BAR. —** As to petitioner's liability for the damages sustained by the shipment: **The rule as stated in Article 1735 of the Civil Code is that in cases where the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence required by law.** Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property rights. This standard is intended to grant favor to the shipper who is at the mercy of the common carrier once the goods have been entrusted to the latter for shipment. Here, the shipment delivered to the consignee sustained water damage. The shipment arrived in the port of Manila and was received

by petitioner for carriage on July 26, 1993. On the same day, it was stripped from the container van. Five days later, on July 31, 1993, it was re-stuffed inside another container van. On August 1, 1993, it was loaded onto another vessel bound for Cebu. During the period between July 26 to 31, 1993, the shipment was outside a container van and kept in storage by petitioner. The bill of lading issued by petitioner on July 31, 1993 contains the notation "grounded outside warehouse," suggesting that from July 26 to 31, the goods were kept outside the warehouse. And since evidence showed that rain fell over Manila during the same period, we can conclude that this was when the shipment sustained water damage. To prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of the goods tendered for transport and that it exercised due care in handling them. Extraordinary diligence must include safeguarding the shipment from damage coming from natural elements such as rainfall. Aside from denying that the "grounded outside warehouse" notation referred not to the crate for shipment but only to the carrier van, petitioner failed to mention where exactly the goods were stored during the period in question. It failed to show that the crate was properly stored indoors during the time when it exercised custody before shipment to Cebu.

APPEARANCES OF COUNSEL

Libarios Jalandoni Dimayuga & Magtanong (Libra Law) for petitioner.
Astorga & Repol Law Offices for respondent.

D E C I S I O N

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

THE RIGHT of subrogation attaches upon payment by the insurer of the insurance claims by the assured. As subrogee, the insurer steps into the shoes of the assured and may exercise only those rights that the assured may have against the wrongdoer who caused the damage.

Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) which reversed the Decision[2] of the Regional Trial Court (RTC). The CA ordered petitioner Aboitiz Shipping Corporation to pay the sum of ₱280,176.92 plus interest and attorney's fees in favor of respondent Insurance Company of North America (ICNA).

The Facts

Culled from the records, the facts are as follows:

On June 20, 1993, MSAS Cargo International Limited and/or Associated and/or Subsidiary Companies (MSAS) procured a marine insurance policy from respondent ICNA UK Limited of London. The insurance was for a transshipment of certain wooden work tools and workbenches purchased for the consignee Science Teaching Improvement Project (STIP), Ecotech Center, Sudlon Lahug, Cebu City, Philippines.[3] ICNA issued an "all-risk" open marine policy,[4] stating:

> This Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure for MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies on behalf of the title holder: — Loss, if any, payable to the Assured or order.[5]

The cargo, packed inside one container van, was shipped "freight prepaid" from Hamburg, Germany on board M/S Katsuragi. A clean bill of lading[6] was issued by Hapag-Lloyd

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[1] *Rollo,* pp. 43-60. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring. CA-G.R. CV No. 81684, decision dated March 29, 2005.

[2] *Id.* at 212-218. Penned by Judge Romeo F. Barza. Civil Case No. 94-1590, decision dated November 14, 2003.

[3] Covered by a commercial invoice from Rainer Fux German Asia Trade.

[4] Records, pp. 348-349. Open Marine Policy No. 87GB 4475.

[5] *Id.* at 348.

[6] *Id.* at 381-382. Bill of Lading No. 33-006402.

which stated the consignee to be STIP, Ecotech Center, Sudlon Lahug, Cebu City.

The container van was then off-loaded at Singapore and transsshipped on board M/S Vigour Singapore. On July 18, 1993, the ship arrived and docked at the Manila International Container Port where the container van was again off-loaded. On July 26, 1993, the cargo was received by petitioner Aboitiz Shipping Corporation (Aboitiz) through its duly authorized booking representative, Aboitiz Transport System. The bill of lading[7] issued by Aboitiz contained the notation "grounded outside warehouse."

The container van was stripped and transferred to another crate/container van without any notation on the condition of the cargo on the Stuffing/Stripping Report.[8] On August 1, 1993, the container van was loaded on board petitioner's vessel, MV Super Concarrier I. The vessel left Manila *en route* to Cebu City on August 2, 1993.

On August 3, 1993, the shipment arrived in Cebu City and discharged onto a receiving apron of the Cebu International Port. It was then brought to the Cebu Bonded Warehousing Corporation pending clearance from the Customs authorities. In the Stripping Report[9] dated August 5, 1993, petitioner's checker noted that the crates were slightly broken or cracked at the bottom.

On August 11, 1993, the cargo was withdrawn by the representative of the consignee, Science Teaching Improvement Project (STIP) and delivered to Don Bosco Technical High School, Punta Princesa, Cebu City. It was received by Mr. Bernhard Willig. On August 13, 1993, Mayo B. Perez, then Claims Head of petitioner, received a telephone call from Willig informing him that the cargo sustained water damage. Perez, upon receiving the call, immediately went to the bonded

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[7] *Id.* at 346-347. Bill of Lading Nos. 02-4519072 and INA-02.

[8] *Id.* at 350. Dated July 31, 1993.

[9] *Rollo,* p. 127.

warehouse and checked the condition of the container and other cargoes stuffed in the same container. He found that the container van and other cargoes stuffed there were completely dry and showed no sign of wetness.[10]

Perez found that except for the bottom of the crate which was slightly broken, the crate itself appeared to be completely dry and had no water marks. But he confirmed that the tools which were stored inside the crate were already corroded. He further explained that the "grounded outside warehouse" notation in the bill of lading referred only to the container van bearing the cargo.[11]

In a letter dated August 15, 1993, Willig informed Aboitiz of the damage noticed upon opening of the cargo.[12] The letter stated that the crate was broken at its bottom part such that the contents were exposed. The work tools and workbenches were found to have been completely soaked in water with most of the packing cartons already disintegrating. The crate was properly sealed off from the inside with tarpaper sheets. On the outside, galvanized metal bands were nailed onto all the edges. The letter concluded that apparently, the damage was caused by water entering through the broken parts of the crate.

The consignee contacted the Philippine office of ICNA for insurance claims. On August 21, 1993, the Claimsmen Adjustment Corporation (CAC) conducted an ocular inspection and survey of the damage. CAC reported to ICNA that the goods sustained water damage, molds, and corrosion which were discovered upon delivery to consignee.[13]

On September 21, 1993, the consignee filed a formal claim[14] with Aboitiz in the amount of ₱276,540.00 for the damaged condition of the following goods:

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[10] Records, pp. 536-539; TSN, October 16, 2001, pp. 6-9.

[11] *Id.*

[12] *Id.* at 375-376.

[13] *Id.* at 356-359. Report dated September 18, 1993.

[14] *Id.* at 377.

ten (10) wooden workbenches
three (3) carbide-tipped saw blades
one (1) set of ball-bearing guides
one (1) set of overarm router bits
twenty (20) rolls of sandpaper for stroke sander

In a Supplemental Report dated October 20, 1993,[15] CAC reported to ICNA that based on official weather report from the Philippine Atmospheric, Geophysical and Astronomical Services Administration, it would appear that heavy rains on July 28 and 29, 1993 caused water damage to the shipment. CAC noted that the shipment was placed outside the warehouse of Pier No. 4, North Harbor, Manila when it was delivered on July 26, 1993. The shipment was placed outside the warehouse as can be gleaned from the bill of lading issued by Aboitiz which contained the notation "grounded outside warehouse." It was only on July 31, 1993 when the shipment was stuffed inside another container van for shipment to Cebu.

Aboitiz refused to settle the claim. On October 4, 1993, ICNA paid the amount of ₱280,176.92 to consignee. A subrogation receipt was duly signed by Willig. ICNA formally advised Aboitiz of the claim and subrogation receipt executed in its favor. Despite follow-ups, however, no reply was received from Aboitiz.

RTC Disposition

ICNA filed a civil complaint against Aboitiz for collection of actual damages in the sum of ₱280,176.92, plus interest and attorney's fees.[16] ICNA alleged that the damage sustained by the shipment was exclusively and solely brought about by the fault and negligence of Aboitiz when the shipment was left grounded outside its warehouse prior to delivery.

Aboitiz disavowed any liability and asserted that the claim had no factual and legal bases. It countered that the complaint stated no cause of action, plaintiff ICNA had no personality to

[15] *Id.* at 373-374.

[16] Docketed as Civil Case No. 94-1590, RTC-Makati, Branch 61.

institute the suit, the cause of action was barred, and the suit was premature there being no claim made upon Aboitiz.

On November 14, 2003, the RTC rendered judgment against ICNA. The dispositive portion of the decision[17] states:

> WHEREFORE, premises considered, the court holds that plaintiff is not entitled to the relief claimed in the complaint for being baseless and without merit. The complaint is hereby DISMISSED. The defendant's counterclaims are, likewise, DISMISSED for lack of basis.[18]

The RTC ruled that ICNA failed to prove that it is the real party-in-interest to pursue the claim against Aboitiz. The trial court noted that Marine Policy No. 87GB 4475 was issued by ICNA UK Limited with address at Cigna House, 8 Lime Street, London EC3M 7NA. However, complainant ICNA Phils. did not present any evidence to show that ICNA UK is its predecessor-in-interest, or that ICNA UK assigned the insurance policy to ICNA Phils. Moreover, ICNA Phils.' claim that it had been subrogated to the rights of the consignee must fail because the subrogation receipt had no probative value for being hearsay evidence. The RTC reasoned:

> While it is clear that Marine Policy No. 87GB 4475 was issued by Insurance Company of North America (U.K.) Limited (ICNA UK) with address at Cigna House, 8 Lime Street, London EC3M 7NA, *no evidence has been adduced which would show that ICNA UK is the same as or the predecessor-in-interest of plaintiff Insurance Company of North America ICNA with office address at Cigna-Monarch Bldg., dela Rosa cor. Herrera Sts., Legaspi Village, Makati, Metro Manila or that ICNA UK assigned the Marine Policy to ICNA.* Second, the assured in the Marine Policy appears to be MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies. Plaintiff's witness, Francisco B. Francisco, claims that the signature below the name MSAS Cargo International is an endorsement of the marine policy in favor of Science Teaching Improvement Project. *Plaintiff's witness, however, failed to identify whose signature it was and plaintiff did not present on the witness*

[17] *Rollo,* pp. 212-218.

[18] *Id.* at 218.

stand or took (sic) the deposition of the person who made that signature. Hence, the claim that there was an endorsement of the marine policy has no probative value as it is hearsay.

Plaintiff, further, claims that it has been subrogated to the rights and interest of Science Teaching Improvement Project as shown by the Subrogation Form (Exhibit "K") allegedly signed by a representative of Science Teaching Improvement Project. Such representative, however, was not presented on the witness stand. Hence, the Subrogation Form is self-serving and has no probative value.[19] (Emphasis supplied)

The trial court also found that ICNA failed to produce evidence that it was a foreign corporation duly licensed to do business in the Philippines. Thus, it lacked the capacity to sue before Philippine Courts, to wit:

Prescinding from the foregoing, ***plaintiff alleged in its complaint that it is a foreign insurance company duly authorized to do business in the Philippines.*** This allegation was, however, denied by the defendant. In fact, in the Pre-Trial Order of 12 March 1996, one of the issues defined by the court is whether or not the plaintiff has legal capacity to sue and be sued. ***Under Philippine law, the condition is that a foreign insurance company must obtain licenses/authority to do business in the Philippines. These licenses/authority are obtained from the Securities and Exchange Commission, the Board of Investments and the Insurance Commission. If it fails to obtain these licenses/authority, such foreign corporation doing business in the Philippines cannot sue before Philippine courts.*** *Mentholatum Co., Inc. v. Mangaliman,* 72 Phil. 524. (Emphasis supplied)

CA Disposition

ICNA appealed to the CA. It contended that the trial court failed to consider that its cause of action is anchored on the right of subrogation under Article 2207 of the Civil Code. ICNA said it is one and the same as the ICNA UK Limited as made known in the dorsal portion of the Open Policy.[20]

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[19] *Id.* at 216-217.

[20] The dorsal portion contained the provision stating that all claims shall be submitted to the office of the Company or to one (1) of the "Agents" or

On the other hand, Aboitiz reiterated that ICNA lacked a cause of action. It argued that the formal claim was not filed within the period required under Article 366 of the Code of Commerce; that ICNA had no right of subrogation because the subrogation receipt should have been signed by MSAS, the assured in the open policy, and not Willig, who is merely the representative of the consignee.

On March 29, 2005, the CA reversed and set aside the RTC ruling, disposing as follows:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed decision of the Regional Trial Court of Makati City in Civil Case No. 94-1590 is hereby REVERSED and SET ASIDE. A new judgment is hereby rendered ordering defendant-appellee Aboitiz Shipping Corporation to pay the plaintiff-appellant Insurance Company of North America the sum of ₱280,176.92 with interest thereon at the legal rate from the date of the institution of this case until fully paid, and attorney's fees in the sum of ₱50,000, plus the costs of suit.[21]

The CA opined that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. As subrogee, ICNA is entitled to reimbursement from Aboitiz, even assuming that it is an unlicensed foreign corporation. The CA ruled:

> At any rate, We find the ground invoked for the dismissal of the complaint as legally untenable. Even assuming *arguendo* that the plaintiff-insurer in this case is an unlicensed foreign corporation, such circumstance will not bar it from claiming reimbursement from the defendant carrier by virtue of subrogation under the contract of insurance and as recognized by Philippine courts. x x x
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> Plaintiff insurer, whether the foreign company or its duly authorized Agent/Representative in the country, as subrogee of the

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"Representatives," as per list which included "Manila, Philippines, Insurance Co. of North America, Legaspi Village, Makati CCPO Box 482."

[21] *Rollo,* p. 59.

claim of the insured under the subject marine policy, is therefore the real party in interest to bring this suit and recover the full amount of loss of the subject cargo shipped by it from Manila to the consignee in Cebu City. x x x[22]

The CA ruled that the presumption that the carrier was at fault or that it acted negligently was not overcome by any countervailing evidence. Hence, the trial court erred in dismissing the complaint and in not finding that based on the evidence on record and relevant provisions of law, Aboitiz is liable for the loss or damage sustained by the subject cargo.

Issues

The following issues are up for Our consideration:

(1) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT ICNA HAS A CAUSE OF ACTION AGAINST ABOITIZ BY VIRTUE OF THE RIGHT OF SUBROGATION BUT WITHOUT CONSIDERING THE ISSUE CONSISTENTLY RAISED BY ABOITIZ THAT THE FORMAL CLAIM OF STIP WAS NOT MADE WITHIN THE PERIOD PRESCRIBED BY ARTICLE 366 OF THE CODE OF COMMERCE; AND, MORE SO, THAT THE CLAIM WAS MADE BY A WRONG CLAIMANT.

(2) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE SUIT FOR REIMBURSEMENT AGAINST ABOITIZ WAS PROPERLY FILED BY ICNA AS THE LATTER WAS AN AUTHORIZED AGENT OF THE INSURANCE COMPANY OF NORTH AMERICA (U.K.) ("ICNA UK").

(3) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THERE WAS PROPER INDORSEMENT OF THE INSURANCE POLICY FROM THE ORIGINAL ASSURED MSAS CARGO INTERNATIONAL LIMITED ("MSAS") IN FAVOR OF THE CONSIGNEE STIP, AND THAT THE SUBROGATION

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[22] *Id.* at 52-53.

RECEIPT ISSUED BY STIP IN FAVOR OF ICNA IS VALID NOTWITHSTANDING THE FACT THAT IT HAS NO PROBATIVE VALUE AND IS MERELY HEARSAY AND A SELF-SERVING DOCUMENT FOR FAILURE OF ICNA TO PRESENT A REPRESENTATIVE OF STIP TO IDENTIFY AND AUTHENTICATE THE SAME.

(4) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE EXTENT AND KIND OF DAMAGE SUSTAINED BY THE SUBJECT CARGO WAS CAUSED BY THE FAULT OR NEGLIGENCE OF ABOITIZ.[23] (Underscoring supplied)

Elsewise stated, the controversy rotates on three (3) central questions: (a) Is respondent ICNA the real party-in-interest that possesses the right of subrogation to claim reimbursement from petitioner Aboitiz? (b) Was there a timely filing of the notice of claim as required under Article 366 of the Code of Commerce? (c) If so, can petitioner be held liable on the claim for damages?

Our Ruling

We answer the triple questions in the affirmative.

A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits.[24] It may, however, bring suits on isolated business transactions, which is not prohibited

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[23] *Id.* at 20-21.

[24] Corporation Code, Sec. 133. *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines, but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. See also *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte,* G.R. No. 159586, July 26, 2004, 435 SCRA 246, 255.

under Philippine law.[25] Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license *per se*, which bars a foreign corporation from access to our courts.[26]

In any case, We uphold the CA observation that while it was the ICNA UK Limited which issued the subject marine policy, the present suit was filed by the said company's authorized agent in Manila. It was the domestic corporation that brought the suit and not the foreign company. Its authority is expressly provided for in the open policy which includes the ICNA office in the Philippines as one of the foreign company's agents.

As found by the CA, the RTC erred when it ruled that there was no proper indorsement of the insurance policy by MSAS, the shipper, in favor of STIP of Don Bosco Technical High School, the consignee.

The terms of the Open Policy authorize the filing of any claim on the insured goods, to be brought against ICNA UK, the company who issued the insurance, or against any of its listed agents worldwide.[27] MSAS accepted said provision when it signed and accepted the policy. The acceptance operated as an acceptance of the authority of the agents. Hence, a formal indorsement of the policy to the agent in the Philippines was unnecessary for the latter to exercise the rights of the insurer.

Likewise, the Open Policy expressly provides that:

> The Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure MSAS Cargo

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[25] *Bulakhidas v. Navarro,* G.R. No. L-49695, April 7, 1986, 142 SCRA 1, 2-3.

[26] *Universal Shipping Lines v. Intermediate Appellate Court,* G.R. No. 74125, July 31, 1990, 188 SCRA 170, 173.

[27] See note 20.

International Limited &/or Associates &/or Subsidiary Companies in behalf of the title holder: — Loss, if any, payable to the Assured or Order.

The policy benefits any subsequent assignee, or holder, including the consignee, who may file claims on behalf of the assured. This is in keeping with Section 57 of the Insurance Code which states:

A policy may be so framed that it *will inure to the benefit of whosoever*, during the continuance of the risk, *may become the owner of the interest insured*. (Emphasis added)

Respondent's cause of action is founded on it being subrogated to the rights of the consignee of the damaged shipment. The right of subrogation springs from Article 2207 of the Civil Code, which states:

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis added)

As this Court held in the case of *Pan Malayan Insurance Corporation v. Court of Appeals*,[28] payment by the insurer to the assured operates as an equitable assignment of all remedies the assured may have against the third party who caused the damage. Subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.[29]

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[28] G.R. No. 81026, April 3, 1990, 184 SCRA 54; see also *Philippine American General Insurance Co., Inc. v. Court of Appeals,* G.R. No. 116940, June 11, 1997, 273 SCRA 262, 274.

[29] *Pan Malayan Insurance Corporation v. Court of Appeals, id.* at 58.

Upon payment to the consignee of indemnity for damage to the insured goods, ICNA's entitlement to subrogation equipped it with a cause of action against petitioner in case of a contractual breach or negligence.[30] This right of subrogation, however, has its limitations. First, both the insurer and the consignee are bound by the contractual stipulations under the bill of lading.[31] Second, the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. If by its own acts after receiving payment from the insurer, the insured releases the wrongdoer who caused the loss from liability, the insurer loses its claim against the latter.[32]

The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Circumstances peculiar to this case lead Us to conclude that the notice requirement was complied with. As held in the case of *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*,[33] this notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

Under the Code of Commerce, the notice of claim must be made within twenty four (24) hours from receipt of the cargo if the damage is not apparent from the outside of the package. For damages that are visible from the outside of the package, the claim must be made immediately. The law provides:

Article 366. *Within twenty four hours* following the receipt of the merchandise, the claim against the carrier for damages or average which may be found therein upon opening the packages, may be made,

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[30] *Federal Express Corporation v. American Home Assurance Company,* G.R. No. 150094, August 18, 2004, 437 SCRA 50, 56.

[31] *Id.* at 56-57.

[32] *Manila Mahogany Manufacturing Corporation v. Court of Appeals,* G.R. No. 52756, October 12, 1987, 154 SCRA 650, 656.

[33] G.R. No. 87434, August 5, 1992, 212 SCRA 194.

provided that the indications of the damage or average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.

After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. (Emphasis supplied)

The periods above, as well as the manner of giving notice may be modified in the terms of the bill of lading, which is the contract between the parties. Notably, neither of the parties in this case presented the terms for giving notices of claim under the bill of lading issued by petitioner for the goods.

The shipment was delivered on August 11, 1993. Although the letter informing the carrier of the damage was dated August 15, 1993, that letter, together with the notice of claim, was received by petitioner only on September 21, 1993. But petitioner admits that even before it received the written notice of claim, Mr. Mayo B. Perez, Claims Head of the company, was informed by telephone sometime in August 13, 1993. Mr. Perez then immediately went to the warehouse and to the delivery site to inspect the goods in behalf of petitioner.[34]

In the case of *Philippine Charter Insurance Corporation (PCIC) v. Chemoil Lighterage Corporation*,[35] the notice was allegedly made by the consignee through telephone. The claim for damages was denied. This Court ruled that such a notice did not comply with the notice requirement under the law. There was no evidence presented that the notice was timely given. Neither was there evidence presented that the notice was relayed to the responsible authority of the carrier.

As adverted to earlier, there are peculiar circumstances in the instant case that constrain Us to rule differently from the

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[34] Records, pp. 536-539; TSN, October 16, 2001, pp. 6-9.

[35] G.R. No. 136888, June 29, 2005, 462 SCRA 77.

PCIC case, albeit this ruling is being made *pro hac vice,* not to be made a precedent for other cases.

Stipulations requiring notice of loss or claim for damage as a condition precedent to the right of recovery from a carrier must be given a reasonable and practical construction, adapted to the circumstances of the case under adjudication, and their application is limited to cases falling fairly within their object and purpose.[36]

Bernhard Willig, the representative of consignee who received the shipment, relayed the information that the delivered goods were discovered to have sustained water damage to no less than the Claims Head of petitioner, Mayo B. Perez. Immediately, Perez was able to investigate the claims himself and he confirmed that the goods were, indeed, already corroded.

Provisions specifying a time to give notice of damage to common carriers are ordinarily to be given a reasonable and practical, rather than a strict construction.[37] We give due consideration to the fact that the final destination of the damaged cargo was a school institution where authorities are bound by rules and regulations governing their actions. Understandably, when the goods were delivered, the necessary clearance had to be made before the package was opened. Upon opening and discovery of the damaged condition of the goods, a report to this effect had to pass through the proper channels before it could be finalized and endorsed by the institution to the claims department of the shipping company.

The call to petitioner was made two days from delivery, a reasonable period considering that the goods could not have corroded instantly overnight such that it could only have sustained the damage during transit. Moreover, petitioner was able to immediately inspect the damage while the matter was still fresh. In so doing, the main objective of the prescribed time period was fulfilled. Thus, there was substantial compliance with the notice requirement in this case.

[36] 14 Am. Jur. 2d 581.

[37] 14 Am. Jur. 2d 585.

To recapitulate, We have found that respondent, as subrogee of the consignee, is the real party in interest to institute the claim for damages against petitioner; and *pro hac vice*, that a valid notice of claim was made by respondent.

We now discuss petitioner's liability for the damages sustained by the shipment. **The rule as stated in Article 1735 of the Civil Code is that in cases where the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence required by law.**[38] Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property rights.[39] This standard is intended to grant favor to the shipper who is at the mercy of the common carrier once the goods have been entrusted to the latter for shipment.[40]

Here, the shipment delivered to the consignee sustained water damage. We agree with the findings of the CA that petitioner failed to overturn this presumption:

> x x x upon delivery of the cargo to the consignee Don Bosco Technical High School by a representative from Trabajo Arrastre, and the crates opened, it was discovered that the workbenches and work tools suffered damage due to "wettage" although by then they were already physically dry. *Appellee carrier having failed to discharge the burden of proving that it exercised extraordinary diligence in the vigilance over such goods it contracted for carriage, the presumption of fault or negligence on its part from the time the goods were unconditionally placed in its possession (July 26, 1993) up to the time the same were delivered to the consignee (August 11, 1993), therefore stands.* The presumption

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[38] Civil Code, Art. 1735.

[39] *Republic v. Lorenzo Shipping Corporation,* G.R. No. 153563, February 7, 2005, 450 SCRA 550, 556, citing Black's *Law Dictionary*, 5th ed. 1979, 411.

[40] *Id.*

that the carrier was at fault or that it acted negligently was not overcome by any countervailing evidence. x x x[41] (Emphasis added)

The shipment arrived in the port of Manila and was received by petitioner for carriage on July 26, 1993. On the same day, it was stripped from the container van. Five days later, on July 31, 1993, it was re-stuffed inside another container van. On August 1, 1993, it was loaded onto another vessel bound for Cebu. During the period between July 26 to 31, 1993, the shipment was outside a container van and kept in storage by petitioner.

The bill of lading issued by petitioner on July 31, 1993 contains the notation "grounded outside warehouse," suggesting that from July 26 to 31, the goods were kept outside the warehouse. And since evidence showed that rain fell over Manila during the same period, We can conclude that this was when the shipment sustained water damage.

To prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of the goods tendered for transport and that it exercised due care in handling them.[42] Extraordinary diligence must include safeguarding the shipment from damage coming from natural elements such as rainfall.

Aside from denying that the "grounded outside warehouse" notation referred not to the crate for shipment but only to the carrier van, petitioner failed to mention where exactly the goods were stored during the period in question. It failed to show that the crate was properly stored indoors during the time when it exercised custody before shipment to Cebu. As amply explained by the CA:

On the other hand, the supplemental report submitted by the surveyor has confirmed that it was rainwater that seeped into the cargo based

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[41] *Rollo,* p. 58.

[42] *Calvo v. UCPB General Insurance, Inc.,* 429 Phil. 244 (2002).

on official data from the PAGASA that there was, indeed, rainfall in the Port Area of Manila from July 26 to 31, 1993. The Surveyor specifically noted that the subject cargo was under the custody of appellee carrier from the time it was delivered by the shipper on July 26, 1993 until it was stuffed inside Container No. ACCU-213798-4 on July 31, 1993. *No other inevitable conclusion can be deduced from the foregoing established facts that damage from "wettage" suffered by the subject cargo was caused by the negligence of appellee carrier in grounding the shipment outside causing rainwater to seep into the cargoes.*

Appellee's witness, Mr. Mayo tried to disavow any responsibility for causing "wettage" to the subject goods by claiming that the notation "GROUNDED OUTSIDE WHSE." actually refers to the container *and not the contents thereof or the cargoes. And yet it presented no evidence to explain where did they place or store the subject goods from the time it accepted the same for shipment on July 26, 1993 up to the time the goods were stripped or transferred from the container van to another container and loaded into the vessel M/V Supercon Carrier I on August 1, 1993 and left Manila for Cebu City on August 2, 1993.* x x x If the subject cargo was not grounded outside prior to shipment to Cebu City, appellee provided no explanation as to where said cargo was stored from July 26, 1993 to July 31, 1993. What the records showed is that the subject cargo was stripped from the container van of the shipper and transferred to the container on August 1, 1993 and finally loaded into the appellee's vessel bound for Cebu City on August 2, 1993. The Stuffing/ Stripping Report (Exhibit "D") at the Manila port did not indicate any such defect or damage, but when the container was stripped upon arrival in Cebu City port after being discharged from appellee's vessel, it was noted that only one (1) slab was slightly broken at the bottom allegedly hit by a forklift blade (Exhibit "F").[43] (Emphasis added)

Petitioner is thus liable for the water damage sustained by the goods due to its failure to satisfactorily prove that it exercised the extraordinary diligence required of common carriers.

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*.

[43] *Rollo,* pp. 57-58.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172029. August 6, 2008]

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., in its own behalf and in representation of its members: AMERICAN TRANSPORT LINES, INC., AUSTRALIAN NATIONAL LINE, FLEET TRANS INTERNATIONAL AND UNITED ARAB SHIPPING CO., DONGNAMA SHIPPING CO., HANJIN SHIPPING COMPANY, LTD., HAPAG-LLOYD A/G, KNUTSEN LINE, KYOWA LINE, NEPTUNE ORIENT LINE, ORIENT OVERSEAS CONTAINER LINE, P & O CONTAINERS, LTD., P & O SWIRE CONTAINERS AND WILH WILHELMSEN LINE A/S, REGIONAL CONTAINERS LINES (PTE), LTD., SENATOR LINE BREMEN GERMANY, TOKYO SENPAKU KAISHA, LTD., UNIGLORY LINE, WAN HAI LINES, LTD., WESTWIND LINE, ZIM ISRAEL NAVIGATION CO., LTD., COMPANIA SUD AMERICANA DE VAPORES S.A., DEUTSCHE SEEREEDEREI ROSTOCK (DSR) GERMANY AND ARIMURA SANGYO COMPANY, LTD., PACIFIC INTERNATIONAL LINES (PTE), LTD., COMPAGNIE MARITIME D' AFFRETEMENT (CMA), YANGMING MARINE TRANSPORT CORP., NIPON YUSEN KAISHA, HYUNDAI MERCHANT MARINE CO., LTD., MALAYSIAN INTERNATIONAL SHIPPING CORPORATION BERHAD, BOLT ORIENT LINE, MITSUI O.S.K. LINES, LTD., PHILS.

MICRONESIA & ORIENT NAVIGATION CO. (PMSO LINE), LLOYD TRIESTINO DI NAVIGAZIONE S.P.A.N., HEUNG-A SHIPPING COMPANY, KAWASAKI KISEN KAISHAARIMURA SANGYO COMPANY, LTD., AMERICAN PRESIDENT LINES, LTD., MAERSK FILIPINAS, INC., EASTERN SHIPPING LINES, INC., NEDLLOYD LINES, INC., PHILIPPINE PRESIDENT LINES, LTD., SEA-LAND SERVICE, INC., MADRIGAL-WAN HAI LINES, *petitioners, vs.* **UNITED HARBOR PILOTS' ASSOCIATION OF THE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; NIGHTTIME AND OVERTIME PAY; COURT'S RULING IN G.R. NO. 133763 THAT "EO NO. 1088 DID NOT REPEAL THE PROVISIONS OF PPA AO NO. 03-85 ON NIGHTTIME AND OVERTIME PAY," NECESSARILY RENDERED PPA RESOLUTION NOS. 1486, 1541 AND 1554 WITHOUT ANY LEGAL EFFECT; ELUCIDATED. — This Court's ruling in G.R. No. 133763 that "EO No. 1088 did not repeal the provisions of PPA AO No. 03-85 on nighttime and overtime pay," necessarily rendered PPA Resolution Nos. 1486, 1541 and 1554 without any legal effect.** At the outset, it should be stressed that the PPA issued the subject resolutions — which disallowed overtime pay and recalled PPA's recommendation for nighttime pay to harbor pilots — pursuant to Section 3 of EO No. 1088 stating that "all orders, letters of instruction, rules, regulations and issuances inconsistent with it are repealed or amended accordingly." As this Court pronounced in G.R. No. 133763, there is nothing in EO No. 1088 that reveals any intention on the part of Former President Marcos to amend or supersede the provisions of PPA AO No. 03-85 on nighttime and overtime pay. While Section 3 of EO No. 1088 provides a general repealing clause, the same is made dependent upon its actual inconsistency with other previous orders, rules, regulations or other issuance. There is **no** inconsistency between EO No. 1088 and the

provisions of PPA AO No. 03-85. These two orders dwell on entirely different subject matters. EO No. 1088 provides for uniform and modified rates for pilotage services rendered to foreign and coastwise vessels in all Philippine ports, public or private. On the other hand, the subject matter of the provisions of PPA AO No. 03-85 is the payment of the additional charges of nighttime and overtime pay. Plainly, EO No. 1088 involves the **basic** compensation for pilotage service while PPA AO No. 03-85 provides for the **additional** charges where pilotage service is rendered under certain circumstances. Obviously, this Court's ruling in G.R. No. 133763 was that EO No. 1088 did not repeal the provisions of PPA AO No. 03-85 on nighttime and overtime pay as there was no inconsistency between the two orders. The ruling rendered "without legal effect" PPA Resolution Nos. 1486, 1541, and 1554, which were all issued by PPA pursuant to Section 3 of EO No. 1088. Upon the other hand, the validity of the earlier PPA AO No. 03-85, which allowed nighttime and overtime pay to harbor pilots, was affirmed. It is noteworthy that when this Court, in G.R. No. 133763, reversed the RTC Decision dated January 26, 1998 (which declared, among others, that in view of the repealing clause in EO No. 1088 respondent UHPAP is not authorized to collect any overtime or night shift differential for pilotage services rendered), the Court likewise recognized the right of the members of respondent UHPAP to overtime and nighttime pay under PPA AO No. 03-85. Indeed, a harbor pilot who has rendered nighttime and overtime work must be paid nighttime and overtime pay.

2. **ID.; ID.; ID.; ID.; ADDITIONAL COMPENSATION FOR NIGHTTIME WORK, FOUNDED ON PUBLIC POLICY.** — It bears pointing out that additional compensation for nighttime work is founded on public policy. Working at night is violative of the law of nature for it is the period for rest and sleep. An employee who works at night has less stamina and vigor. Thus, he can easily contract disease. The lack of sunlight tends to produce anemia and tuberculosis and predispose him to other ills. Night work brings increased liability to eyestrain and accident. Serious moral dangers also are likely to result from the necessity of traveling the street alone at night, and from the interference with normal home life. Hygienic, medical, moral, cultural and socio-biological reasons are in accord that night work has many inconveniences and when there is no

alternative but to perform it, it is but just that the laborer should earn greater salary than ordinary work so as to compensate the laborer to some extent for the said inconveniences.

3. ID.; ID.; ID.; ID.; RATIONALE FOR OVERTIME PAY. — Anent the payment of overtime pay, the Court explained its rationale in *Philippine National Bank v. Philippine National Bank Employees Association (PEMA)*: x x x Why is a laborer or employee who works beyond the regular hours of work entitled to extra compensation called in this enlightened time, overtime pay? Verily, there can be no other reason than that he is made to work longer than what is commensurate with his agreed compensation for the statutorily fixed or voluntarily agreed hours of labor he is supposed to do. When he thus spends additional time to his work, the effect upon him is multi-faceted: he puts in more effort, physical and/or mental; he is delayed in going home to his family to enjoy the comforts thereof; he might have no time for relaxation, amusement or sports; he might miss important pre-arranged engagements; *etc*., *etc*. It is thus the additional work, labor or service employed and the adverse effects just mentioned of his longer stay in his place of work that justify and is the real reason for the extra compensation that he called overtime pay. Overtime work is actually the lengthening of hours developed to the interests of the employer and the requirements of his enterprise. It follows that the wage or salary to be received must likewise be increased, and more than that, a special additional amount must be added to serve either as encouragement or inducement or to make up for the things he loses which we have already referred to. And on this score, it must always be borne in mind that wage is indisputably intended as payment for work done or services rendered.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ACTION FOR DECLARATORY RELIEF; JUDGMENT DOES NOT ENTAIL AN EXECUTORY PROCESS; CASE AT BAR. — The disposition of the RTC in favor of petitioners in the declaratory relief petition was the decision elevated by the UHPAP to this Court. Upon the reversal of the RTC decision by this Court, UHPAP went back to the RTC on a motion for execution. Verily, that course of action on the part of UHPAP was procedurally infirm. In such civil actions for declaratory relief under Rule 63 of the Rules of Court, the judgment does

not entail an executory process, as the primary objective of petitioner is to determine any question of construction or validity and for a declaration of concomitant rights and duties.

APPEARANCES OF COUNSEL

Montilla Law Office for petitioners.
Bermudez Law Office for respondent.

D E C I S I O N

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

PAYMENT of nighttime and overtime differential of harbor pilots is the object of this petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals (CA) partly setting aside the Order[3] of the Regional Trial Court (RTC), Branch 36, Manila pertaining to a motion for execution.

The Facts

On March 1, 1985, the Philippine Ports Authority (PPA) issued PPA Administrative Order (AO) No. 03-85 substantially adopting the provisions of Customs Administrative Order (CAO) No. 15-65[4] on the payment of additional charges for pilotage

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[1] *Rollo,* pp. 8-32.

[2] *Id.* at 33-44. CA-G.R. SP No. 87892. Penned by Associate Justice Conrado M. Vasquez, Jr. (now CA Presiding Justice), with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring.

[3] *Id.* at 76-81. Civil Case No. 96-78400. Penned by Judge Wilfredo D. Reyes.

[4] Customs Administrative Order No. 15-65, Chapter II, Par. VII provides:

> "When pilotage service is rendered at any port between sunset and sunrise, an additional charge of one hundred percentum (100%) over the regular pilotage fees shall be paid for vessels engaged in foreign trade and fifty (50%) percentum for coastwise vessels. This additional charge or premium fee for night time pilotage service shall likewise be paid when the pilotage service is commenced before and finished after sunset or commenced before and finished after sunrise."

service[5] rendered "between 1800H to 1600H," or on "Sundays or Holidays," practically referring to "nighttime and overtime pay." Section 16 of the AO reads:

> Section 16. *Payment of Pilotage Service Fees*. — **Any vessel which employs a Harbor Pilot shall pay the pilotage fees** prescribed in this Order and shall comply with the following conditions:
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> x x x x x x x x x
>
> c) When pilotage service is rendered at any port between 1800H to 1600H, Sundays or Holidays, **an additional charge of one hundred (100%) percentum over the regular pilotage fees shall be paid by vessels engaged in foreign trade, and fifty (50%) percentum by coastwise vessels. This additional charge or premium fee for nighttime pilotage service shall likewise be paid when the pilotage service is commenced before and terminated after sunrise**.
>
> Provided, however, that no premium fee shall be considered for service rendered after 1800H if it shall be proven that the service can be undertaken before such hours after the one (1) hour grace period, as provided in paragraph (d) of this section, has expired. (Emphasis supplied)

On February 3, 1986, responding to the clamor of harbor pilots for the increase and rationalization of pilotage service charges, then President Ferdinand E. Marcos issued Executive Order (EO) No. 1088 providing for uniform and modified rates for pilotage services rendered in all Philippine ports. It fixed the rate of pilotage fees on the basis of the "vessel's tonnage" and provided that the "rate for docking and undocking anchorage,

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[5] As defined, pilotage service consists of navigating a vessel from a specific point, usually about two (2) miles off shore, to an assigned area at the pier and vice versa. Thus, when a vessel arrives, a harbor pilot takes over the ship from its captain to maneuver it to a berth in the port, and when it departs, the harbor pilot also maneuvers it up to a specific point off shore. The set up is required by the fact that each port has a peculiar topography with which a harbor pilot is presumed to be more familiar than a ship captain. (*Philippine Interisland Shipping Association of the Philippines v. Court of Appeals,* G.R. No. 100481, January 22, 1997, 266 SCRA 489, 495).

conduction and shifting and other related special services is equal to 100%." EO No. 1088 also contained a repealing clause stating that all orders, letters of instruction, rules, regulations, and issuances inconsistent with it are repealed or amended accordingly.[6]

Subsequently, pursuant to EO No. 1088, the PPA issued several resolutions disallowing overtime premium or charge and recalling its recommendation for a reasonable night premium pay or night differential pay, *viz.*:

RESOLUTION NO. 1486[7]

RESOLVED, That on motion duly seconded, and in consideration of the proper court order(s) mandating PPA to implement the pilotage rates under Executive Order No. 1088, **the overtime premium or charge collected by Harbor Pilots is hereby disallowed** and Section 16(c) of Article III of PPA Administrative Order No. 03-85, prescribing general guidelines on pilotage services, be, as it is hereby repealed and modified accordingly;

RESOLVED FURTHER, That the General Manager, be, as he is hereby authorized, to issue the corresponding amendatory guidelines.

RESOLUTION NO. 1541[8]

RESOLVED, That on motion duly seconded, and after taking into consideration the respective positions of the various Harbor Pilot associations and shipping groups, **Board Resolution No. 1486, be, as it is hereby reiterated and affirmed, and Management, be, as it is hereby directed to adopt a policy of no overtime pay for pilotage services**;

RESOLVED FURTHER, That **in lieu of the "no overtime pay policy," Management be, as it is hereby directed, to recommend a reasonable night premium pay or night differential pay for the conduct of the basic pilotage services."**

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[6] Executive Order No. 1088, Sec. 3.

[7] *Rollo,* p. 48.

[8] *Id.* at 49.

RESOLUTION NO. 1554[9]

RESOLVED, That on motion duly seconded, and taking into consideration the arguments raised by the Association of International Shipping Lines, Inc., raising certain legal issues on the adoption of Resolution No. 1541, as adopted on November 13, 1995, the proposed PPA Administrative Order No. 19-95, hereto attached and incorporated by reference, recommending amendments to Section 16(c) of PPA Administrative Order No. 03-85, disallowing overtime pay and authorizing instead the collection of nighttime premium pay for pilotage services rendered during nighttime (1800H to 0600H), be, as it is hereby deferred, for further legal review;

RESOLVED FURTHER, That **pending review and clarification by the Office of the Government Corporate Counsel of the legal issues on overtime pay/nighttime premium pay, Resolution No. 1541, be, as it is hereby recalled and Resolution No. 1486, as adopted on May 19, 1995, be, as it is hereby reaffirmed.**

On the strength of PPA Resolution No. 1486, petitioners Association of International Shipping Lines (AISL) and its members refused to pay respondent United Harbor Pilots' Association of the Philippines, Inc. (UHPAP)'s claims for nighttime and overtime pay.[10] In response, UHPAP threatened to discontinue pilotage services should their claims be continually ignored.[11]

Petitioners then filed a petition for declaratory relief with the RTC, Branch 36, Manila, docketed as Civil Case No. 96-78400. The issues raised there were: **(1) whether EO No. 1088 authorized the payment of nighttime and overtime pay**; and (2) whether the rate of pilotage fees enumerated in EO No. 1088 were for "every pilotage maneuver" or for the "entire package of pilotage services."

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[9] *Id.* at 50.

[10] UHPAP is the umbrella organization of various groups rendering pilotage service in the different ports of the Philippines. It services foreign and domestic shipping companies, including the members of petitioner AISL.

[11] UHPAP Resolution No. 1-96.

On January 26, 1998, the RTC granted the petition and declared that respondent UHPAP is not authorized to collect any overtime or night shift differential for pilotage services rendered. The RTC disposed as follows:

> WHEREFORE, **judgment is hereby rendered granting the petition herein and it is hereby declared that (1) respondent PPA is bereft of authority to impose and respondent UHPAP is not authorized to collect any overtime or night shift differential for pilotage services rendered; and (2) the rates of fees for pilotage services rendered refer to the totality of pilotage services rendered and respondent UHPAP cannot legally charge separate fees for each pilotage service rendered**. All billings inconsistent with this decision are declared null and void and petitioners are not liable therefor.
>
> SO ORDERED.[12] (Emphasis supplied)

The trial court said that in view of the repealing clause in EO No. 1088, it was axiomatic that all prior issuances inconsistent with it were deemed repealed. Thus, the provisions of Section 16 of PPA AO No. 03-85 on nighttime and overtime pay were "effectively stricken-off the books." It further held that since the rate of pilotage fees enumerated in EO No. 1088 was based on the "vessel's tonnage," it meant that such rate referred to the "entire package of pilotage services." According to the trial court, to rule otherwise is to frustrate the uniformity envisioned by the rationalization scheme.

Respondent UHPAP moved for reconsideration but the motion was denied.

Desiring to secure for its members the payment of nighttime and overtime pay, respondent UHPAP filed directly before this Court a petition for review on *certiorari*, docketed as G.R. No. 133763, raising the following legal issues for determination: (1) **whether EO No. 1088 repealed the provisions of CAO No. 15-65 and PPA AO No. 03-85, as amended, on payment of additional pay for holidays work and premium pay for**

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[12] *Rollo,* p. 37.

nighttime service; (2) whether the rates, as fixed in the schedule of fees based on tonnage in EO No. 1088, are to be imposed on every pilotage movement; and (3) whether EO No. 1088 deprived the PPA of its right, duty and obligation to promulgate new rules and rates for payment of fees, including additional pay for holidays and premium pay for nighttime services.

On November 13, 2002, this Court granted the petition and reversed the RTC. This Court held then:

Section 3 of E.O. No. 1088 is a general repealing clause, the effect of which falls under the category of an implied repeal as it does not identify the orders, rules or regulations it intends to abrogate. A repeal by implication is frowned upon in this jurisdiction. It is not favored, unless it is manifest that the legislative authority so intended or unless it is convincingly and unambiguously demonstrated that the subject laws or orders are clearly repugnant and patently inconsistent that they cannot co-exist. This is because the legislative authority is presumed to know the existing law so that if repeal is intended, the proper step is to express it.

***There is nothing in E.O. No. 1088 that reveals any intention on the part of Former President Marcos to amend or supersede the provisions of PPA AO No. 03-85 on nighttime and overtime pay*. While it provides a general repealing clause, the same is made dependent upon its actual inconsistency with other previous orders, rules, regulations or other issuance. *Unfortunately for AISL, we find no inconsistency between E.O. No. 1088 and the provisions of PPA AO No. 03-85*. At this juncture, it bears pointing out that *these two orders dwell on entirely different subject matters. E.O. No. 1088 provides for uniform and modified rates for pilotage services rendered to foreign and coastwise vessels in all Philippine ports, public or private*. The purpose is to rationalize and standardize the pilotage service charges nationwide. Upon the other hand, *the subject matter of the controverted provisions of PPA AO No. 03-85 is the payment of the additional charges of nighttime and overtime pay*.** Plainly, E.O. No. 1088 involves the basic compensation for pilotage service while PPA AO No. 03-85 provides for the additional charges where pilotage service is rendered under certain circumstances. **Just as the various wage orders do not repeal the provisions of the Labor Code on nighttime and overtime pay, the same principle holds true with respect to**

E.O. No. 1088 and PPA AO 03-85. Moreover, this Court adheres to the rule that every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. E.O. No. 1088 and PPA AO No. 03-85 should thus be read together and harmonized to give effect to both.

x x x x x x x x x

While E.O. No. 1088 prescribes the rates of pilotage fees on the basis of the "vessel's tonnage," however, this does not necessarily mean that the said rate shall apply to the totality of pilotage services. If it were so, the benefit intended by E.O. No. 1088 to harbor pilots would be rendered useless and ineffectual. It would create an unjust if not an absurd situation of reducing take home pay of the harbor pilots to a single fee, regardless of the number of services they rendered from the time a vessel arrives up to its departure. It must be remembered that pilotage services cover a variety of maneuvers such as "docking," "undocking anchorage," "conduction," "shifting" and other "related special services." **To say that the rate prescribed by E.O. No. 1088 refers to the totality of all these maneuvers is to defeat the benefit intended by the law for harbor pilots. It should be stressed that E.O. No. 1088 was enacted in response to the clamor of harbor pilots for the increase and rationalization of pilotage service charges through the imposition of uniform and adjusted rates. Hence, in keeping with the benefit intended by E.O. No. 1088, the schedule of fees fixed therein based on tonnage should be interpreted as applicable to "each pilotage maneuver" and not to the "totality of the pilotage services."**

The use of the word "and" between the words "docking" and "undocking" in paragraph 2 of Section 1 of E.O. No. 1088 should not override the above-mentioned purpose of said law. It is a basic precept of statutory construction that statutes should be construed not so much according to the letter that killeth but in line with the purpose for which they have been enacted. Statutes are to be given such construction as will advance the object, suppress the mischief, and secure the benefits intended.

Furthermore, as can be gleaned from the drafts submitted by the PPA on the guidelines pertaining to the uniform pilotage services to be rendered in all pilotage districts, the PPA is of the interpretation that the rate of pilotage fees fixed by E.O. No. 1088 is to be separately imposed on every pilotage maneuver done by the harbor pilots. This

interpretation is likewise made clear in PPA Memorandum Circular No. 42-98, dated October 8, 1998, which clarifies pilotage charges for docking and undocking, as follows —

> "To prevent disruption in pilotage service and considering the pendency of the final and executory decision of the Supreme Court on the pilotage rates issue, it is hereby clarified that pilotage fees for docking and undocking of vessels shall be paid as two (2) separate services x x x."

The PPA is the proper government agency tasked with the duty of implementing E.O. No. 1088. As such, its interpretation of said law carries great weight and consideration. In a catena of cases, we ruled that the construction given to a statute by an administrative agency charged with the interpretation and application of a statute is entitled to great respect and should be accorded great weight by the courts. The exception, which does not obtain in the present case, is when such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs, it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

The charges and fees provided for in E.O. No. 1088 are therefore to be imposed for every pilotage maneuver performed by the harbor pilots, as properly interpreted by the PPA, the agency charged with its implementation.

x x x x x x x x x

Finally, on the third issue, **we rule that E.O. No. 1088 does not deprive the PPA of its power and authority to promulgate new rules and rates for payment of fees, including additional charges**. As we held in *Philippine Interisland Shipping Association of the Philippines v. Court of Appeals*:

> "**The power of the PPA to fix pilotage rates and its authority to regulate pilotage still remain notwithstanding the fact that a schedule for pilotage fees has already been prescribed by the questioned executive order (referring to E.O. No. 1088). PPA is at**

liberty to fix new rates of pilotage subject only to the limitation that such new rates should not go below the rates fixed under E.O. No. 1088. x x x."

Our pronouncement is clearly in consonance with the provisions of Presidential Decree 857 which vests upon the PPA the power and authority (1) "to supervise, control, regulate x x x such services as are necessary in the ports vested in, or belonging to the Authority"; (2) "to control, regulate and supervise pilotage and the conduct of pilots in any Port District"; and (3) "to impose, fix, prescribe, increase or decrease such rates, charges or fees x x x for the services rendered by it or by any private organization within a Port District."[13] (Emphasis supplied)

The decision became final and executory on February 14, 2003.

On April 8, 2003, respondent UHPAP filed a motion for the issuance of a writ of execution with the RTC.[14] Petitioners opposed[15] the motion.

On September 25, 2003, the RTC issued an Order[16] denying respondent UHPAP's motion and declaring that "pursuant to the decision of the Supreme Court in G.R. No. 133763, PPA Resolution Nos. 1486, 1541, and 1554 are valid and effective thereby disallowing the collection of overtime pay."[17] The RTC explained:

x x x **[W]hen the Supreme Court ruled and declared that Executive Order 1088 does not deprive the PPA of its power and authority to promulgate rules and rates for payment of fees including additional charges, it had effectively ruled on the validity of PPA resolutions 1486, 1541, and 1554.** Said resolutions did not violate any provision of Executive Order 1088 and did not

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[13] *Id.* at 66-67.

[14] *Id.* at 69-71.

[15] *Id.* at 72-75.

[16] *Id.* at 76-81.

[17] *Id.* at 81.

constitute any diminution of the rates provided by said Executive Order. They merely repealed the collection of overtime premiums or charges which is provided not by Executive Order 1088 but by another PPA Administrative Order 03-85. This is not inconsistent with the ruling of the Supreme Court that Executive Order 1088 did not repeal the additional pay for holiday work and premium pay for nighttime service, collectively referred to as overtime pay provided in Customs Administrative Order No. 15-65 and PPA Administrative Order 03-85. The Supreme Court did not consider subsequent PPA resolutions or administrative orders affecting overtime pay because this was not brought out as an issue.

Resolutions 1486, 1541, and 1554 have no effect on Executive Order 1088 whatsoever.[18] (Emphasis supplied)

Respondent UHPAP then filed a petition for *certiorari*[19] under Rule 65 with the CA, docketed as CA-G.R. SP No. 87892. It contended that the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it practically overturned the final and executory decision of this Court in G.R. No. 133763 by declaring in its September 25, 2003 Order that PPA Resolution Nos. 1486, 1541, and 1554 were valid and effective.[20]

CA Disposition

In a Decision dated October 19, 2005, the CA partly granted respondent's petition in that it affirmed the denial of the motion for the issuance of a writ of execution while, at the same time, deleting portions of the challenged Order. The decretal portion of the CA Decision states:

IN VIEW OF ALL THE FOREGOING, **the herein petition is hereby PARTLY GRANTED**, in such a way that **the denial of UHPAP's motion for the issuance of a writ of execution is AFFIRMED**, while **the declaration** in the assailed Order of September 25, 2003 stating that "**pursuant to the decision of the Supreme Court in G.R. No. 133763, PPA resolutions 1486, 1541,**

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[18] *Id.* at 79-80.

[19] *Id.* at 82-95.

[20] *Id.* at 89.

and 1554 are valid and effective thereby disallowing the collection of overtime pay," is RECALLED and SET ASIDE and ordered DELETED from the said Order. No pronouncement as to cost.

SO ORDERED.[21] (Emphasis supplied)

The CA set aside the declaration in the RTC Order dated September 25, 2003 that "pursuant to the decision of the Supreme Court in G.R. No. 133763, PPA Resolution Nos. 1486, 1541, and 1554 are valid and effective thereby disallowing the collection of overtime pay." According to the CA, the RTC committed grave abuse of discretion as "it really not only modified but reversed a final and executory decision of the highest court of the land."[22] The appellate court ruled that when this Court, in G.R. No. 133763, declared ineffective the "pretended" repealing effect of EO No. 1088 on PPA AO No. 03-85, the subject PPA Resolutions implementing Section 3 of EO No. 1088 were automatically rendered without any legal effect as well.[23] It also ruled that since there was no inconsistency between EO No. 1088 and the provisions of PPA AO No. 03-85, the latter was rendered in full legal force and effect.[24]

On November 10, 2005, petitioners filed a motion for partial reconsideration.[25] It contended that in resolving the issue of whether EO No. 1088 repealed the provisions of CAO No. 15-65 and PPA AO No. 03-85 on nighttime and overtime pay, this Court, in G.R. No. 133763, did not discuss the logical consequence of the resolution of the issue on PPA Resolution Nos. 1486, 1541, and 1554.[26] It further asserted that PPA Resolution Nos. 1486, 1541, and 1554 remain valid as they

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[21] *Id.* at 93.

[22] *Id.* at 40, 42.

[23] *Id.* at 42.

[24] *Id.*

[25] *Id.* at 151-160.

[26] *Id.* at 152.

were issued pursuant to PPA's authority to regulate pilotage services.[27]

In a Resolution dated March 23, 2006, the CA denied petitioners' motion for partial reconsideration. Hence, the present recourse.

Issue

Petitioners, via Rule 45, submit the lone assignment that THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN INTERPRETING AND CONCLUDING THAT THE RULING OF THE SUPREME COURT IN THE CASE OF "*THE UNITED HARBOR PILOTS' ASSOCIATION OF THE PHILIPPINES, INC. V. ASSOCIATION OF THE INTERNATIONAL SHIPPING LINES, INC., ET AL.*, G.R. 133763," RENDERED "WITHOUT LEGAL EFFECT" THE PPA RESOLUTION NOS. 1486, 1541, AND 1554 WHICH REPEALED OVERTIME AND NIGHTTIME PAY.[28]

Our Ruling

The petition lacks merit.

This Court's ruling in G.R. No. 133763 that "EO No. 1088 did not repeal the provisions of PPA AO No. 03-85 on nighttime and overtime pay," necessarily rendered PPA Resolution Nos. 1486, 1541 and 1554 without any legal effect. Petitioners posit that notwithstanding the declaration by this Court in G.R. No. 133763 that EO No. 1088 did not repeal the overtime and nighttime pay provided under PPA AO 03-85, PPA Resolution Nos. 1486, 1541, and 1554 were not rendered "without legal effect." They insist that in resolving in G.R. No. 133763 the issue of whether EO No. 1088 repealed the provisions of PPA AO No. 03-85 on nighttime and overtime pay, this Court did not discuss the logical consequence of the resolution of the issue on the subject PPA Resolutions.[29]

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[27] *Id.* at 158.

[28] *Id.* at 18.

[29] *Id.*

We are not persuaded.

At the outset, it should be stressed that the PPA issued the subject resolutions — which disallowed overtime pay and recalled PPA's recommendation for nighttime pay to harbor pilots – pursuant to Section 3 of EO No. 1088 stating that "all orders, letters of instruction, rules, regulations and issuances inconsistent with it are repealed or amended accordingly." The PPA, just like petitioners,[30] was of the belief that there was an actual inconsistency or an irreconcilable conflict between EO No. 1088 and the provisions of PPA AO No. 03-85 on nighttime and overtime pay, resulting in the implied repeal of the latter.[31]

But, as this Court pronounced in G.R. No. 133763, there is nothing in EO No. 1088 that reveals any intention on the part of Former President Marcos to amend or supersede the provisions of PPA AO No. 03-85 on nighttime and overtime pay. While Section 3 of EO No. 1088 provides a general repealing clause, the same is made dependent upon its actual inconsistency with other previous orders, rules, regulations or other issuance.

There is **no** inconsistency between EO No. 1088 and the provisions of PPA AO No. 03-85. These two orders dwell on entirely different subject matters. EO No. 1088 provides for uniform and modified rates for pilotage services rendered to foreign and coastwise vessels in all Philippine ports, public or private. On the other hand, the subject matter of the provisions of PPA AO No. 03-85 is the payment of the additional charges of nighttime and overtime pay. Plainly, EO No. 1088 involves the **basic** compensation for pilotage service while PPA AO No. 03-85 provides for the **additional** charges where pilotage service is rendered under certain circumstances.

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[30] *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.,* G.R. No. 133763, November 13, 2002, 391 SCRA 522, 531. In its comment on the petition for review on *certiorari* filed by respondent UHPAP in G.R. No. 133763, petitioner AISL argued that "there exists an actual inconsistency between EO No. 1088 and PPA AO No. 03-85, thus, EO No. 1088 should be construed as an implied repeal of PPA AO No. 03-85 provisions on nighttime and overtime pay."

[31] *Id.*

Obviously, this Court's ruling in G.R. No. 133763 was that EO No. 1088 did not repeal the provisions of PPA AO No. 03-85 on nighttime and overtime pay as there was no inconsistency between the two orders. The ruling rendered "without legal effect" PPA Resolution Nos. 1486, 1541, and 1554, which were all issued by PPA pursuant to Section 3 of EO No. 1088. Upon the other hand, the validity of the earlier PPA AO No. 03-85, which allowed nighttime and overtime pay to harbor pilots, was affirmed.

It is noteworthy that when this Court, in G.R. No. 133763, reversed the RTC Decision dated January 26, 1998 (which declared, among others, that in view of the repealing clause in EO No. 1088 respondent UHPAP is not authorized to collect any overtime or night shift differential for pilotage services rendered), the Court likewise recognized the right of the members of respondent UHPAP to overtime and nighttime pay under PPA AO No. 03-85. Indeed, a harbor pilot who has rendered nighttime and overtime work must be paid nighttime and overtime pay.

Members of respondent UHPAP are entitled to nighttime and overtime pay. Undoubtedly, pursuant to PPA AO No. 03-85, members of respondent UHPAP are legally entitled to nighttime and overtime pay.

It bears pointing out that additional compensation for nighttime work is founded on public policy.[32] Working at night is violative of the law of nature for it is the period for rest and sleep. An employee who works at night has less stamina and vigor. Thus, he can easily contract disease. The lack of sunlight tends to produce anemia and tuberculosis and predispose him to other ills. Night work brings increased liability to eyestrain and accident. Serious moral dangers also are likely to result from the necessity of traveling the street alone at night, and from the interference with normal home life.[33] Hygienic, medical, moral, cultural and

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[32] *Mercury Drug Co., Inc. v. Dayao,* G.R. No. L-30452, September 30, 1982, 117 SCRA 99, 114; Civil Code, Art. 6.

[33] *Shell Company v. National Labor Union*, 81 Phil. 315, 328 (1948), citing Commons and Andrews, *Principles of Labor Legislation*, 4th rev. ed., p. 142.

socio-biological reasons are in accord that night work has many inconveniences and when there is no alternative but to perform it, it is but just that the laborer should earn greater salary than ordinary work so as to compensate the laborer to some extent for the said inconveniences.[34]

Anent the payment of overtime pay, the Court explained its rationale in *Philippine National Bank v. Philippine National Bank Employees Association (PEMA)*:[35]

> x x x Why is a laborer or employee who works beyond the regular hours of work entitled to extra compensation called in this enlightened time, overtime pay? Verily, there can be no other reason than that he is made to work longer than what is commensurate with his agreed compensation for the statutorily fixed or voluntarily agreed hours of labor he is supposed to do. When he thus spends additional time to his work, the effect upon him is multi-faceted: he puts in more effort, physical and/or mental; he is delayed in going home to his family to enjoy the comforts thereof; he might have no time for relaxation, amusement or sports; he might miss important pre-arranged engagements; *etc*., *etc*. It is thus the additional work, labor or service employed and the adverse effects just mentioned of his longer stay in his place of work that justify and is the real reason for the extra compensation that he called overtime pay.
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> Overtime work is actually the lengthening of hours developed to the interests of the employer and the requirements of his enterprise. It follows that the wage or salary to be received must likewise be increased, and more than that, a special additional amount must be added to serve either as encouragement or inducement or to make up for the things he loses which we have already referred to. And on this score, it must always be borne in mind that wage is indisputably intended as payment for work done or services rendered.[36]

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[34] Poquiz, *Labor Standards Law with Notes and Comments*, 1999 ed., pp. 176-177, citing Barbash, *The Practice of Unionism*, p. 145.

[35] G.R. No. L-30279, July 30, 1982, 115 SCRA 507.

[36] *Philippine National Bank v. Philippine National Bank Employees Association (PEMA), id.* at 527-528.

Moreover, We agree with the CA that the RTC correctly denied respondent's motion for execution. It will be recalled that the original action before the RTC was one for declaratory relief filed by petitioners praying for:

(1) a construction of Executive Order No. 1088 declaring that AISLI is not liable to pay overtime and night shift differential to respondent UHPAP; and

(2) a construction of Executive Order No. 1088 declaring that the schedule of rates provided therein applies to the entire package of pilotage services under the compulsory pilotage scheme and that UHPAP cannot separately charge AISLI for each pilotage service rendered.[37]

The disposition of the RTC in favor of petitioners in the declaratory relief petition was the decision elevated by the UHPAP to this Court.[38] Upon the reversal of the RTC decision by this Court, UHPAP went back to the RTC on a motion for execution. Verily, that course of action on the part of UHPAP was procedurally infirm.

In such civil actions for declaratory relief under Rule 63 of the Rules of Court, the judgment does **not** entail an executory process, as the primary objective of petitioner is to determine any question of construction or validity and for a declaration of concomitant rights and duties.[39] The proper remedy would have been for members of respondent UHPAP to claim for overnight and nighttime pay before petitioners AISLI and its members.

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*. Costs against petitioners.

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[37] *Rollo,* p. 37.

[38] G.R. No. 133763.

[39] Rule 63, Sec 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. x x x

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172115. August 6, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESUS BALIGOD *y* PINEDA,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, UPHELD IN CASE AT BAR. —** Rape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof. To ensure that justice is meted out, extreme care and caution is required in weighing the conflicting testimonies of the complainant and the accused. x x x In open court, AAA had subjected herself to the glare of public prosecution for rape, positively identified appellant as her rapist and candidly revealed the ugly details of the deplorable violation of her person. Notably, both the trial and appellate courts gave credence to her testimony and they both regarded her as a credible witness. Absent any showing that the lower courts had overlooked certain facts of substance and value which, if considered might affect the result of the case, we find no basis to doubt or dispute, much less overturn, the findings of credibility by both courts.

2. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY. —** Juxtaposed against the prosecution evidence,

appellant's defense of denial is inherently weak. As often stressed, a mere denial constitutes negative evidence and warrants the least credibility or none at all absent any strong evidence of non-culpability. It cannot prevail over the positive and credible declarations of the victim and her witnesses testifying on affirmative matters.

3. **CRIMINAL LAW; RAPE; NOT NEGATED BY THE FACT THAT VICTIM IS IN HER LATE 60's. —** The fact that the victim is already in her late 60's does not negate the possibility of rape because what is decisive in rape cases under Art. 266-A(1)(a) of the Revised Penal Code, as amended, is whether the prosecution, as in this case, has sufficiently proved the commission by the accused of having carnal knowledge with a woman by use of force.

4. **ID.; ID.; PECUNIARY PENALTY; PROPER CIVIL INDEMNITY AND MORAL DAMAGES. —** As to the award of damages, both courts are consistent with the prevailing jurisprudence on simple rape and correctly imposed ₱50,000 as civil indemnity. Conformably too, the Court of Appeals correctly modified the award of moral damages from ₱25,000 to ₱50,000 as the latter amount is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has suffered moral injuries entitling her to such an award.

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 February 9, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00368, which

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[1] CA *rollo*, pp. 112-120. Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring.

had affirmed the Judgment[2] dated July 20, 2004 of the Regional Trial Court (RTC) of xxx, Cagayan, Branch 11 in Criminal Case No. 971-T, finding appellant Jesus Baligod *y* Pineda guilty beyond reasonable doubt of the crime of rape under Article 266-A(1)(a)[3] in relation to Article 266-B[4] of the Revised Penal Code, as amended; sentencing him to suffer the penalty of *reclusion perpetua*; and ordering him to pay the victim ₱50,000 as civil indemnity and ₱50,000 as moral damages.

The Information[5] dated February 4, 2002 in which Baligod was indicted for the crime of rape reads:

x x x x x x x x x

That on or about August 16, 2001, in the Municipality of [xxx], Province of [xxx], and within the jurisdiction of this Honorable Court, the said accused, JESUS BALIGOD *Y* PINEDA, with lewd design and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party, [AAA],[6] against her will.

Contrary to law.

When arraigned, Baligod pleaded not guilty. Trial ensued thereafter.

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[2] Records, pp. 95-96. Penned by Judge Orlando D. Beltran.

[3] Art. 266-A. *Rape, When and How Committed.* — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

x x x x x x x x x

[4] Art. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

[5] Records, p. 14.

[6] The real name of the victim is withheld; see *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

Based on the testimonies of AAA, the victim herself, and BBB, the wife of AAA's nephew, the prosecution established that at around 9:00 p.m. on August 16, 2001, AAA, 67 years old, was on her way to her sister's place in xxx, Cagayan. While she was at the roadside looking for a tricycle, Baligod came from behind, grabbed her and held her neck. She struggled but she fell to the ground. Baligod dragged her towards the inner portion of the roadside and continuously boxed her on the chest and mouth. Then he forced her to lie down. He threatened to kill her. When she got weak, Baligod removed her shorts and underwear, went on top of her and inserted his penis inside her vagina. After satisfying his lust, Baligod ran away. AAA cried for help.[7]

BBB was at her residence around 9:30 p.m. and heard AAA's cry for help. She and her husband went outside and saw AAA sitting at the roadside naked from waist down. AAA's mouth was bleeding, her face was swollen and she was having difficulty breathing. When they asked AAA what happened, AAA narrated that she was sexually molested by "Kisut" Baligod. BBB sought the help of DDD, AAA's brother, who reported the incident to the police authorities. AAA was brought to xxx District Hospital.[8]

The medical certificate issued by Dr. Rowena Martina Cardenas-Sion, who physically examined AAA, sets forth the following:

1. Contusion, about 2x2.0 cm. mandibular area.
2. Periorbital contusion-hematoma, right with subconjunctival hemorrhage.
3. Perioral contusion-hematoma.
4. (+) Positive erythema, anterior neck.
5. Cyanotic tongue.
6. (+) Positive edematous gingivae, lower.
7. (+) Positive severe tenderness anterior chest.
8. (+) Positive superficial abrasions irregular knee, bilateral.

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[7] CA *rollo,* p. 113.

[8] *Id.*

9. I.E. – Edematous clitoral area with severe tenderness.
HYMEN – very old healed lacerations at 2, 6, 10 o'clock area.
Vagina admits 2 fingers snuggly with tenderness.[9]

Baligod denied the charges against him and testified that on August 16, 2001, he was at xxx until 5:00 p.m., plying his usual route as a tricycle driver. After driving the whole day, he brought three bottles of gin at the house of Mario Castillo and had a drink with the latter. After their drinking spree, Castillo took him home. On their way to his house, they passed by and joined a group who was drinking liquor in one corner. Suddenly, AAA arrived and approached him to bring her to xxx, but he refused and instead told her to go home because it was already dark. AAA did not heed his advice and continued to walk towards the direction of xxx. His companions told him that AAA has a history of attempting to commit suicide whenever she does not get what she wants. On his way home later that night, he saw AAA still walking. Afraid that she would commit suicide, he followed her and advised her to go home. AAA still refused so he boxed her. AAA then went home.[10]

After trial, the court *a quo* rendered judgment convicting Baligod of the crime of rape under Art. 266-A(1)(a) in relation to Art. 266-B of the Revised Penal Code, as amended. The trial court gave weight to AAA's testimony, which was given clearly, convincingly and logically. It also ruled that absent any imputation of ill-motive on AAA, she had no reason to concoct a false tale of rape against Baligod. It also considered the corroborating testimony of prosecution witness BBB as part of the *res gestae* and noted the medical findings of AAA as well. The *fallo* of the decision reads,

WHEREFORE, in view of all the foregoing, the Court hereby finds that the guilt of the accused Jesus Baligod *Y* Pineda *alias* Kisut for the crime of rape defined and penalized under [A]rt. 266-a:1(a) in relation to Art. 266-b both of the Revised Penal Code as amended

[9] Records, p. 3.

[10] CA *rollo,* p. 114.

by Republic Act 8353 has been proven beyond reasonable doubt and hereby sentences the said accused JESUS BALIGOD *Y* PINEDA to suffer imprisonment of twenty five (25) years of *Reclusion Perpetua*. He is further sentenced to pay the private complainant [AAA] the amount of ₱50,000.00 as civil indemnity plus the further amount of ₱25,000.00 as moral damages.

SO ORDERED.[11]

On appeal, the Court of Appeals upheld the trial court's ruling but modified the award of moral damages. It regarded AAA as a credible witness and accorded full credence to AAA's testimony because it was categorical, straightforward and consistent. It also ruled that appellant's acts of grabbing AAA, holding her neck, boxing her several times on the chest and mouth and threatening to kill her are strongly suggestive of force or at least intimidation sufficient to bring her to submission.[12] The decretal portion of the decision reads:

WHEREFORE, the appealed decision in Criminal Case 971-T is hereby **AFFIRMED with MODIFICATION**. Accused-appellant **Jesus Baligod *y* Pineda** is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to indemnify the private complainant the sums of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.[13]

The case is now before us for final disposition. In his brief, appellant faults the trial court in

…CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[14]

Essentially, the issue for our resolution is whether appellant's guilt has been proven beyond reasonable doubt.

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[11] Records, p. 96.

[12] CA *rollo,* p. 116.

[13] *Id*. at 120.

[14] *Id*. at 25.

In his brief, appellant assails the sufficiency of the prosecution evidence and contends that the prosecution should not draw its strength from the weakness of his defense. He claims that he was drinking liquor with a group when AAA approached her to accompany her to xxx. He refused her plea, but he got worried because his companions informed him that she has a suicidal tendency. So, he followed her to advise her to go home instead, but she insisted to do otherwise. Appellant admits he boxed her, but denies raping her. He also argues that he could not have raped her because she was already 68[15] years of age.

For the State, the Office of the Solicitor General contends that the following elements of rape were proven: (1) that the offender had carnal knowledge of a woman; and (2) that such act is accomplished by using force or intimidation. It cites the trial court's findings according credence to the testimonies of AAA and BBB. It also points out that appellant's acts of boxing AAA negate appellant's testimony "that he only boxed AAA because he respected her."

We affirm appellant's conviction.

Rape is generally unwitnessed and oftentimes, the victim is left to testify for herself.[16] Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof.[17] To ensure that justice is meted out, extreme care and caution is required in weighing the conflicting testimonies of the complainant and the accused.

During trial, AAA recounted the terrible experience which had befallen her as follows:

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[15] *Id.* at 28; TSN, October 9, 2002, p. 2.

[16] *People v. Penaso,* G.R. No. 121980, February 23, 2000, 326 SCRA 311, 318.

[17] *People v. Gabelinio,* G.R. Nos. 132127-29, March 31, 2004, 426 SCRA 608, 619.

FISCAL:

x x x x x x x x x

Q What was that?
A I was holding a wick lamp going to the house of my relatives to ask for a tricycle available.

Q What happened while you were on your way?
A He suddenly grabbed me by the neck from behind then I fell to the ground and the lamp I was holding also fell to the ground.

Q Who grabbed you?
A Jesus Baligod.

Q If this person will be shown to you, will you be able to identify him?
A Yes, sir.

Q If he is around the courtroom will you please point at him.
A There, sir. (Witness pointed to a person and who was asked his name and he answered that he is Jesus Baligod).

COURT:

Q Where did Jesus Baligod come from before he grabbed you?
A From behind.

x x x x x x x x x

Q You said that the accused grabbed you and you fell to the ground, what did he do after that?
A He boxed me, held my neck and he even boxed my chest.

Q How many times did he box you?
A I can't remember anymore, sir.

COURT:

Q Did he stay on top of you?
A Yes, sir.

FISCAL:

Q Then what did he do next?
A He removed my short pant[s] and panty.

Q How about him when he removed your shorts and panty, what did he do?
A He inserted his penis.

Q Where?
A In my vagina.

Q How do you know that his penis was inserted into your vagina?
A I felt his penis entering my vagina.

x x x x x x x x x

COURT:

Q Did he perform a sexual motion into your vagina? I mean the pushing in and out motions?
A [Y]es, sir.

Q And what did you feel or notice?
A I felt pain.

FISCAL:

x x x x x x x x x

Q After the sexual assault by the accused, what did he do next?
A He ran.

Q How about you what did you do?
A I just stayed sitting on the road and then a help came.[18]

x x x x x x x x x

In open court, AAA had subjected herself to the glare of public prosecution for rape, positively identified appellant as her rapist and candidly revealed the ugly details of the deplorable violation of her person. Notably, both the trial and appellate courts gave credence to her testimony and they both regarded her as a credible witness. Absent any showing that the lower courts had overlooked certain facts of substance and value which, if considered might affect the result of the case, we find no basis to doubt or dispute, much less overturn, the findings of credibility by both courts. As we have held in *People v. Malejana*,[19]

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[18] TSN, October 9, 2002, pp. 3-5.

[19] *People v. Malejana,* G.R. No. 145002, January 24, 2006, 479 SCRA 610.

> Having the opportunity to observe [the witnesses in open court], the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court.
>
> The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer [or] the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these on the basis of his observations arrive[d] at an informed and reasoned verdict.[20]

Juxtaposed against the prosecution evidence, appellant's defense of denial is inherently weak. As often stressed, a mere denial constitutes negative evidence and warrants the least credibility or none at all absent any strong evidence of non-culpability. It cannot prevail over the positive and credible declarations of the victim and her witnesses testifying on affirmative matters.[21]

Further, appellant's admission of boxing AAA negates his own premise that he was only concerned with AAA's safety when he advised the latter to go home instead. Also, the fact that the victim is already in her late 60's does not negate the possibility of rape because what is decisive in rape cases under Art. 266-A(1)(a) of the Revised Penal Code, as amended, is whether the prosecution, as in this case, has sufficiently proved the commission by the accused of having carnal knowledge with a woman by use of force.

As to the award of damages, both courts are consistent with the prevailing jurisprudence on simple rape and correctly imposed ₱50,000 as civil indemnity. Conformably too, the Court of

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[20] *Id.* at 620.

[21] *People v. Penaso, supra* note 16, at 320.

Appeals correctly modified the award of moral damages from ₱25,000 to ₱50,000[22] as the latter amount is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has suffered moral injuries entitling her to such an award.

WHEREFORE, the Decision dated February 9, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00368 is *AFFIRMED*. This Court finds appellant Jesus Baligod *y* Pineda guilty beyond reasonable doubt of the crime of rape and sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the victim the sums of ₱50,000 as civil indemnity and ₱50,000 as moral damages. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173956. August 6, 2008]

FRISCO F. SAN JUAN, *petitioner, vs.* **THE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; WHILE THE THREE-DAY NOTICE RULE IS MANDATORY, COURTS ARE GRANTED AUTHORITY TO SET A HEARING ON SHORTER NOTICE UPON SHOWING OF GOOD CAUSE.— While it is true that any motion that does not comply with the requirements of Rule 15 should not be accepted for filing and, if filed, is not entitled to judicial cognizance, however, this Court has likewise held that where

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[22] *Id*. at 323.

a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case. Besides, in the exercise of its equity jurisdiction, the court may disregard procedural lapses, so that a case may be resolved on its merits based on the evidence presented by the parties. Moreover, under the above-cited Rule, the Court is granted the authority to set the hearing on shorter notice upon showing of good cause.

2. **ID.; ID.; ID.; "GOOD CAUSE," ADEQUATELY SHOWN; LIBERAL CONSTRUCTION OF THE RULE IS ALLOWED WHERE THE INTEREST OF SUBSTANTIAL JUSTICE WILL BE SERVED AND WHERE THE RESOLUTION IS ADDRESSED SOLELY TO THE SOUND AND JUDICIOUS DISCRETION OF THE COURT.—** Petitioner was served with the Manifestation with Motion for Additional Marking of Documentary Exhibits on January 24, 2006, or two days prior to the scheduled hearing date on January 26, 2006. Although the three-day notice rule was not complied with, the Sandiganbayan allowed the motion based on good cause*, i.e.*, that the markings of the additional documentary evidence at this period was due to the sheer volume of the supporting documents to the disbursement vouchers and the fact that such supporting documents were only recently completed and secured. This Court allows a liberal construction of this rule where the interest of substantial justice will be served and where the resolution of the motion is addressed solely to the sound and judicious discretion of the court, as in the instant case.

3. **ID.; ID.; ID.; RIGHT TO DUE PROCESS NOT VIOLATED BY THE ADMISSION OF ADDITIONAL EVIDENCE; PETITIONER CAN STILL FILE HIS OBJECTIONS TO THE DOCUMENTARY EVIDENCE DURING THE TRIAL ON THE MERITS.—** There is likewise no merit to petitioner's contention that his right to due process was violated when the OSP's motion was granted. In its Resolution of February 6, 2006, the Sandiganbayan declared, thus: [T]he Court resolves to GRANT the aforementioned motion but only insofar as to allow additional marking of documentary exhibits which have been sufficiently described in the said motion, over the objection of the defense, in order to give the Prosecution the opportunity to fully present its case, and considering that the Pre-Trial Order has not been signed by the parties. The defense may

register their objections to the documentary exhibits at the time that the same are introduced in evidence. x x x In its Resolution dated June 21, 2006, the Sandiganbayan also held that: While it is true that pre-trial has already been terminated, records show that, before the Pre-Trial Order dated November 7, 2005 was issued, the Court made clear to all the parties, considering the numerous documentary evidence sought to be marked and presented by the parties, that the said Order was "without prejudice to the comment [on the Pre-Trial Order] of the prosecution and the accused;" that is, the Court may still accept any modification of the said Order from both the prosecution and the accused. Upon request of the parties, the Court gave the prosecution and the accused a period of time "to file a formal manifestation with respect to some changes they would like to propose in the Pre-Trial Order" notwithstanding the commencement of the trial. Thus, petitioner can still file his objections to the documentary evidence during trial on the merits of the case.

4. **ID.; ID.; ID.; ADDITIONAL PIECES OF EVIDENCE NOT CONSIDERED "SURPRISE EVIDENCE."—** There is no basis to petitioner's contention that the additional pieces of documentary evidence were "surprise evidence" because during the filing of their respective pre-trial briefs, both parties have made reservations to present additional documentary and testimonial evidence, as may be necessary in the course of the trial; such reservations were incorporated in the Pre-Trial Order.

APPEARANCES OF COUNSEL

Sobreviñas Hayudini Bodegon Navarro & San Juan for petitioner.

D E C I S I O N

YNARES-SANTIAGO, *J*.:

This petition for *certiorari* under Rule 65 of the Rules of Court assails the February 6, 2006 Resolution[1] of the

[1] *Rollo*, p. 25; approved by Presiding Justice Teresita J. Leonardo-De Castro and Associate Justices Diosdado M. Peralta and Alexander G. Gesmundo.

Sandiganbayan in Criminal Case No. 27808 granting the prosecution's Manifestation with Motion for Additional Marking of Documentary Exhibits and the June 21, 2006 Resolution[2] denying the motions for reconsideration separately filed by petitioner and his co-accused.

Petitioner Frisco F. San Juan, in his capacity as Chairman of the Public Estates Authority (PEA), together with 26 other accused, composed of PEA Board of Directors, PEA Officers, Officers of the Commission on Audit and the contractor of Central Boulevard Project (now the President Diosdado Macapagal Boulevard), Jesusito D. Legaspi, were charged before the Sandiganbayan with violation of Sec. 3 (e) of Republic Act No. 3019[3] in an Information which reads:

That in or about the period from April 1999 to August 2002, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officials of the Public Estates Authority (PEA), namely: CARLOS P. DOBLE, former General Manager (with Salary Grade 30) and *ex-officio* member of the PEA Board, BENJAMIN V. CARIÑO, PEA General Manager (with Salary Grade 30) and *ex-officio* member of the Board, and other responsible public officials of PEA, namely: FRISCO FRANCISCO SAN JUAN, former Chairman of the Board, CARMELITA DE LEON-CHAN, DANIEL T. DAYAN, SALVADOR P. MALBAROSA, LEO V. PADILLA and ELPIDIO G. DAMASO, all former members of the Board, ERNEST FREDERICK O. VILLAREAL, Chairman of the Board, and JOEMARI D. GEROCHI, ANGELITO M. VILLANUEVA, MARTIN S. SANCIEGO, JR., and RODOLFO T. TUAZON, all Board members, JAIME R. MILLAN, Assistant General Manager, MANUEL R. BERIÑA, JR., Deputy General Manager for Operations & Technical Services and Chairman of the *Ad Hoc* Committee responsible for the bidding and award of the construction contract for the President Diosdado Macapagal Boulevard Project, THERON VICTOR V. LACSON, Deputy General Manager for Finance, Legal and Administration and member of the *Ad Hoc* Committee, BERNARDO T. VIRAY, Manager for Technical Services Department and member of the *Ad Hoc* Committee, RAPHAEL POCHOLO A. ZORILLA,

[2] *Id*. at 26-28.

[3] Anti-Graft and Corrupt Practices Act.

Project Management Officer, ERNESTO L. ENRIQUEZ, Senior Corporate Attorney and member of the *Ad Hoc* Committee, and CRISTINA AMPOSTA-MORTEL, Department Manager, Legal Department, and other responsible public officials of the Commission on Audit (COA), namely: MANUELA E. DELA PAZ, State Auditor V, ARTURO S. LAYUG, State Auditor V and Chief of the Technical Services Audit Division A, Technical Services Office, BENILDA E. MENDOZA, Supervising Technical Audit Specialist, EPIFANIO L. PUREZA, Assistant Chief of the Technical Services Audit Division A, JOSE G. CAPISTRANO, Technical Audit Specialist II, and MA. CECILIA A. DELA RAMA, Technical Audit Specialist I, all of whom were public officials during the times material to the subject offense, while said public officials were occupying their respective positions as just stated, acting in such capacity and committing the subject offense in relation to office and while in the performance of their functions and duties, with manifest partiality and evident bad faith (or at the very least, gross inexcusable negligence), conspiring and confederating with accused JESUSITO D. LEGASPI, a private contractor doing business under the name of J.D. Legaspi Construction, did then and there, willfully, unlawfully and criminally give unwarranted benefits, advantage and preference to accused JESUSITO D. LEGASPI, through the commission of numerous illegal related acts all pertaining to the President Diosdado Macapagal Boulevard Project, such as (but not limited to) the bidding out of the said project and illegally awarding the same to accused JESUSITO D. LEGASPI's J.D. Legaspi Construction and approving the award of the project to, as well as the Construction Agreement with, J.D. Legaspi Construction despite the lack of compliance with the mandatory requirements and procedure for bidding, even if no funds are yet available to finance the project, without the requisite certificate of availability of funds and without complying with the mandatory conditions imposed by the Office of the President of the approval thereof, per Memorandum dated 29 January 2000 from the Office of the Executive Secretary, Malacañang, and approving/allowing several improper variation/change orders and overruns to be implemented without the requisite presidential approval and the appropriate funds, recognizing, affirming and causing the implementation of the just-mentioned void contract, allowing and paying or causing the allowance and payment of several claims of accused JESUSITO D. LEGASPI for initial contract price, contract price adjustment, variation orders, overruns and other claims even when the same were clearly improper, illegal and without the requisite

presidential approval, thereby paving the way for accused JESUSITO D. LEGASPI to claim and receive undue payments from the Government totaling millions of pesos in improper overprice, thereby causing undue injury and grave damage to the government in the aggregate amount of at least FIVE HUNDRED THIRTY TWO MILLION NINE HUNDRED TWENTY-SIX THOUSAND FOUR HUNDRED TWENTY AND 39/100 PESOS (₱532,926,420.39), more or less, constituting the total illegal overprice paid to accused JESUSITO D. LEGASPI for the subject Project.

CONTRARY TO LAW.[4]

When arraigned on January 21, 2005, petitioner and his co-accused pleaded "not guilty."

The People, represented by the Office of the Special Prosecutor (OSP), filed its pre-trial brief with proposed Exhibits A to HHHH dated March 16, 2005. Petitioner filed his pre-trial brief on June 23, 2005.

Thereafter, the Sandiganbayan issued a Pre-Trial Order,[5] the pertinent portions of which state:

The Prosecution reserves the right to present additional documentary evidence, although this reservation was objected to by the accused on the ground that it violates their constitutional right.[6]

x x x x x x x x x

Accused Frisco F. San Juan reserves the right to present additional documentary evidence.[7]

x x x x x x x x x

This Pre-Trial Order shall bind the parties, limit the issues and control the course of the trial, unless modified by the Court to prevent manifest injustice.

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[4] *Rollo*, pp. 5-7.

[5] *Id.* at 77-120.

[6] *Id.* at 83.

[7] *Id.*

SO ORDERED.[8]

On November 10, 2005, trial commenced with the OSP presenting Karen Villamil as its first witness, without prejudice to the signing of the Pre-Trial Order by the parties.

At the scheduled hearing on January 24, 2006, instead of proceeding with the presentation of its evidence, the OSP filed a manifestation with motion for additional marking of documentary exhibits.[9]

Petitioner filed an Opposition[10] alleging that the motion fails to comply with the three (3) day notice rule, thus, it is fatally defective which must be dismissed outright; that the prosecution's attempt to introduce additional evidence after Pre-Trial has been completed, without petitioner having been confronted by such evidence, violates petitioner's fundamental rights under the Constitution; that petitioner's right to due process has been violated by the presentation of the prosecution's "additional evidence" when such pieces of evidence ought to have been presented during the pre-trial of the case; that the prosecution failed to show "good cause" in order for the "additional evidence" to be accepted, since only those pieces of evidence which are identified and marked are allowed by the court.

On February 6, 2006, the Sandiganbayan issued the herein assailed Resolution[11] granting the motion of the OSP, the pertinent portion of which reads:

Acting on the Prosecution's Manifestation with Motion for Additional Marking of Documentary Exhibits dated January 23, 2006, with the comments and/or oppositions thereto separately filed by accused: (1) Layug, (2) de Leon-Chan, (3) Pureza and Capistrano, (4) Legaspi, (5) Padilla, (6) Beriña, Millan, Viray and Zorilla, (7) San Juan, and (8)Amposta-Mortel, the Court resolves to GRANT

[8] *Id*. at 116.

[9] *Id*. at 146-172.

[10] *Id*. at 173-182.

[11] *Id*. at 25.

the aforementioned motion but only insofar as to allow additional marking of documentary exhibits which have been sufficiently described in the said motion, over the objection of the defense, in order to give the Prosecution the opportunity to fully present its case, and considering that the Pre-Trial Order has not been signed by the parties. The defense may register their objections to the documentary exhibits at the time that the same are introduced in evidence. As prayed for, the prosecution may present the additional documents enumerated in its aforesaid motion for marking, and the same shall be included in its list of exhibits in the Amended Pre-Trial Order to be issued by the Court.[12]

Petitioner and his co-accused filed separate motions for reconsideration but were denied by the Sandiganbayan in its June 21, 2006 Resolution,[13] the pertinent portions of which state:

While it is true that pre-trial has already been terminated, records show that, before the Pre-Trial Order dated November 7, 2005 was issued, the Court made clear to all the parties, considering the numerous documentary evidence sought to be marked and presented by the parties, that the said Order was "without prejudice to the comment [on the Pre-Trial Order] of the prosecution and the accused;" that is, the Court may still accept any modification of the said Order from both the prosecution and the accused. Upon request of the parties, the Court gave the prosecution and the accused a period of time "to file a formal manifestation with respect to some changes they would like to propose in the Pre-Trial Order" notwithstanding the commencement of the trial.[14]

x x x x x x x x x

Apparent from the foregoing is the fact that while the pre-trial has effectively been terminated, the Court gave both the prosecution and the accused the opportunity to submit comments to the Pre-Trial Order or to modify their submissions or in some instances, even to withdraw the stipulations they made during the pre-trial. The Court's position is consistent with the exercise of its discretion

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[12] *Id*.

[13] *Id*. at 26-28.

[14] *Id*. at 27.

to decide how best to dispense justice in accordance with the circumstances of the proceedings before it. The decision to grant the prosecution's motion for additional marking of documentary exhibits is another exercise of this judicial prerogative, which prerogative was made known to the parties in the Pre-Trial Order dated November 7, 2005, when the Court stated that such was subject to modification "in order to prevent manifest injustice."

The guidelines on the conduct of the pre-trial, including A.M. No. 03-1-09-SC, were prescribed by the Honorable Supreme Court to "abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets." The Court does not mean to disregard or ignore these guidelines but the Court is compelled to take into consideration, in the interest of substantial justice, the various submissions of both the prosecution and the accused mentioned above in connection with the agreements reached by the parties that they be allowed to submit their comments on the pre-trial order, even while the trial had begun so as not to delay the proceedings.

WHEREFORE, in view of the foregoing, the instant Motions for Reconsideration of the accused-movants are hereby DENIED for lack of merit.

SO ORDERED.[15]

Hence, this petition.

The issues for resolution are: (1) whether the Sandiganbayan gravely abused its discretion when it granted OSP's motion for additional marking of exhibits; and (2) whether the admission of the "additional evidence" constitutes a violation of petitioner's constitutional right to due process.

The petition lacks merit.

Section 4, Rule 15 of the Rules of Court, reads:

SEC. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its

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[15] *Id*. at 28.

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.

While it is true that any motion that does not comply with the requirements of Rule 15 should not be accepted for filing and, if filed, is not entitled to judicial cognizance, however, this Court has likewise held that where a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case.[16] Besides, in the exercise of its equity jurisdiction, the court may disregard procedural lapses, so that a case may be resolved on its merits based on the evidence presented by the parties.[17] Moreover, under the above-cited Rule, the Court is granted the authority to set the hearing on shorter notice upon showing of good cause.

In the instant case, petitioner was served with the Manifestation with Motion for Additional Marking of Documentary Exhibits on January 24, 2006, or two days prior to the scheduled hearing date on January 26, 2006.[18] Although the three-day notice rule was not complied with, the Sandiganbayan allowed the motion based on good cause, *i.e.*, that the markings of the additional documentary evidence at this period was due to the sheer volume of the supporting documents to the disbursement vouchers and the fact that such supporting documents were only recently completed and secured.[19]

This Court allows a liberal construction of this rule where the interest of substantial justice will be served and where the resolution of the motion is addressed solely to the sound and

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[16] *People v. Leviste*, G.R. No. 104386, March 28, 1996, 255 SCRA 238, 247.

[17] *Active Realty and Development Corporation v. Fernandez*, G.R. No. 157186, October 19, 2007, 537 SCRA 116, 130.

[18] *Rollo*, p. 146.

[19] *Id.* at 27.

judicious discretion of the court,[20] as in the instant case. Thus, the Sandiganbayan correctly held that:

Apparent from the foregoing is the fact that while the pre-trial has effectively been terminated, the Court gave both the prosecution and the accused the opportunity to submit comments to the Pre-Trial Order or to modify their submissions or in some instances, even to withdraw the stipulations they made during the pre-trial. ***The Court's position is consistent with the exercise of its discretion to decide how best to dispense justice in accordance with the circumstances of the proceedings before it. The decision to grant the prosecution's motion for additional marking of documentary exhibits is another exercise of this judicial prerogative, which prerogative was made known to the parties in the Pre-Trial Order dated November 7, 2005, when the Court stated that such was subject to modification "in order to prevent manifest injustice.***[21] (Emphasis supplied)

There is likewise no merit to petitioner's contention that his right to due process was violated when the OSP's motion was granted. In its Resolution of February 6, 2006, the Sandiganbayan declared, thus:

[T]he Court resolves to GRANT the aforementioned motion but only insofar as to allow additional marking of documentary exhibits which have been sufficiently described in the said motion, over the objection of the defense, in order to give the Prosecution the opportunity to fully present its case, and considering that the Pre-Trial Order has not been signed by the parties. The defense may register their objections to the documentary exhibits at the time that the same are introduced in evidence. x x x[22]

In its Resolution dated June 21, 2006, the Sandiganbayan also held that:

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[20] *Tan v. Court of Appeals*, G.R. No. 130314, September 22, 1998, 295 SCRA 755, 767.

[21] *Rollo*, p. 28.

[22] *Id*. at 25.

While it is true that pre-trial has already been terminated, records show that, before the Pre-Trial Order dated November 7, 2005 was issued, the Court made clear to all the parties, considering the numerous documentary evidence sought to be marked and presented by the parties, that the said Order was "without prejudice to the comment [on the Pre-Trial Order] of the prosecution and the accused;" that is, the Court may still accept any modification of the said Order from both the prosecution and the accused. Upon request of the parties, the Court gave the prosecution and the accused a period of time "to file a formal manifestation with respect to some changes they would like to propose in the Pre-Trial Order" notwithstanding the commencement of the trial.[23]

Thus, petitioner can still file his objections to the documentary evidence during trial on the merits of the case.

Finally, there is no basis to petitioner's contention that the additional pieces of documentary evidence were "surprise evidence" because during the filing of their respective pre-trial briefs, both parties have made reservations to present additional documentary and testimonial evidence, as may be necessary in the course of the trial;[24] such reservations were incorporated in the Pre-Trial Order.

WHEREFORE, the Petition for *Certiorari* is *DISMISSED*. The February 6, 2006 Resolution of the Sandiganbayan in Criminal Case No. 27808 granting OSP's Manifestation with Motion for Additional Marking of Documentary Exhibits, and the June 21, 2006 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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[23] *Id*. at 27.

[24] *Id*. at 46 & 54.

THIRD DIVISION

[G.R. No. 175109. August 6, 2008]

PARAMOUNT INSURANCE CORP., *petitioner, vs.* **A.C. ORDOÑEZ CORPORATION and FRANKLIN SUSPINE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE UPON PRIVATE JURIDICAL ENTITIES; SERVICE OF SUMMONS TO SOMEONE OTHER THAN THE PERSONS MENTIONED IN SECTION 11, RULE 14, OF THE RULES OF COURT IS NOT VALID; SERVICE OF SUMMONS TO RESPONDENT CORPORATION'S RECEIVING SECTION IS DEFECTIVE AND NOT BINDING ON THE CORPORATION.—** Section 11, Rule 14 sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid. The designation of persons or officers who are authorized to receive summons for a domestic corporation or partnership is limited and more clearly specified in the new rule. The phrase 'agent, or any of its directors' has been conspicuously deleted. Moreover, the argument of substantial compliance is no longer compelling. We have ruled that the new rule, as opposed to Section 13, Rule 14 of the 1964 Rules of Court, is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exlusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have done so in clear and concise language. Absent a manifest intent to liberalize the rule, strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure is required. Thus, the service of summons to respondent corporation's Receiving Section through Samuel D. Marcoleta is defective and not binding to said corporation.

2. **ID.; ID.; ID.; ID.; ALTHOUGH THE ANSWER WAS FILED BEYOND THE EXTENSION PERIOD REQUESTED BY**

RESPONDENT, SECTION 11, RULE 11 OF THE RULES OF COURT GRANTS DISCRETION TO THE TRIAL COURT TO ALLOW AN ANSWER OR OTHER PLEADING TO BE FILED AFTER THE REGLEMENTARY PERIOD, UPON MOTION AND ON SUCH TERMS AS MAY BE JUST.— On its face, the return shows that the summons was received by an employee who is not among the responsible officers enumerated by law. Such being invalid, petitioner should have sought the issuance and proper service of new summons instead of moving for a declaration of default. Consequently, the motions for declaration of default filed on May 19, 2000 and June 30, 2000 were both premature. Thus, there was no grave abuse of discretion when the Metropolitan Trial Court admitted respondent corporation's Answer. Although it was filed beyond the extension period requested by respondent corporation, however, Sec. 11, Rule 11 grants discretion to the trial court to allow an answer or other pleading to be filed after the reglementary period, upon motion and on such terms as may be just. An answer should be admitted where it had been filed before the defendant was declared in default and no prejudice is caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.

3. ID.; ID.; THE DECISION TO REFER A CASE TO MEDIATION INVOLVES JUDICIAL DISCRETION; ANY PARTY WHO IS INTERESTED TO HAVE THE APPEALED CASE MEDIATED MAY ALSO SUBMIT A "WRITTEN REQUEST" TO THE COURT OF APPEALS.— The decision to refer a case to mediation involves judicial discretion. Although Sec. 9 B, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, requires the payment of ₱1,000.00 as mediation fee *upon the filing* of a mediatable case, petition, special civil action, comment/answer to the petition or action, and the appellee's brief, the final decision to refer a case to mediation still belongs to the *ponente*, subject to the concurrence of the other members of the division. As clarified by A.M. No. 04-3-15 (Revised Guidelines for the Implementation of Mediation in the Court of Appeals) dated March 23, 2004: II. SELECTION OF CASES Division Clerks of Court, with the assistance of the Philippine Mediation Center (PMC), shall identify the **pending cases** to be referred to mediation for the approval either of the *Ponente* for completion

of records, or, the *Ponente* for decision. **Henceforth**, the petitioner or appellant shall specify - by writing or by stamping on the right side of the caption of the initial pleading (under the case number) that the case is mediatable. **Any party who is interested to have the appealed case mediated may also submit a written request in any form** to the Court of Appeals. If the case is eligible for mediation, the Ponente, with the concurrence of the other members of the Division, shall refer the case to the PMC. Thus, for cases pending at the time said guidelines were issued, the Division Clerks of Court, with the assistance of the Philippine Mediation Center, shall identify the cases to be referred to mediation. Thereafter, the petitioner or appellant shall specify, by writing or by stamping on the right side of the caption of the initial pleading (under the case number), that the case is mediatable. Further, any party who is interested to have the appealed case mediated may also submit a "written request in any form to the Court of Appeals." In the instant case, petitioner failed to write or stamp the notation "mediatable" on its Memorandum of Appeal. Moreover, it failed to submit any written request for mediation.

4. **MERCANTILE LAW; CORPORATIONS; A CORPORATION WHOSE CORPORATE EXISTENCE IS TERMINATED IN ANY MANNER CONTINUES TO BE A BODY CORPORATE FOR THREE YEARS AFTER ITS DISSOLUTION FOR PURPOSES OF PROSECUTING AND DEFENDING SUITS BY AND AGAINST IT AND TO ENABLE IT TO SETTLE AND CLOSE ITS AFFAIRS.—** There is likewise no merit in petitioner's claim that respondent corporation lacks legal personality to file an appeal. Although the cancellation of a corporation's certificate of registration puts an end to its juridical personality, Sec. 122 of the Corporation Code, however provides that a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three years after its dissolution for purposes of prosecuting and defending suits by and against it and to enable it to settle and close its affairs. Moreover, the rights of a corporation, which is dissolved pending litigation, are accorded protection by law pursuant to Sec. 145 of the Corporation Code. Dissolution or even the expiration of the three-year liquidation period should not be a bar to a corporation's enforcement of its rights as a corporation.

APPEARANCES OF COUNSEL

Cabantog-Ong & Associates for petitioner.
Karaan and Karaan Law Office for A.C. Ordoñez Corp.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* seeks to annul and set aside the July 17, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 93073, which reversed and set aside the September 21, 2005 Decision of the Regional Trial Court of Makati City, Branch 58[2] and reinstated the August 25, 2000 and September 26, 2000 Orders of the Metropolitan Trial Court of Makati City, Branch 66,[3] which admitted respondent's Answer and set the case for pre-trial, as well as its October 12, 2006 Resolution[4] denying the Motion for Reconsideration.

Petitioner Paramount Insurance Corp. is the subrogee of Maximo Mata, the registered owner of a Honda City sedan involved in a vehicular accident with a truck mixer owned by respondent corporation and driven by respondent Franklin A. Suspine on September 10, 1997, at Brgy. Panungyanan, Gen. Trias, Cavite.

On February 22, 2000, petitioner filed before the Metropolitan Trial Court of Makati City, a complaint for damages against respondents. Based on the Sheriff's Return of Service, summons remained unserved on respondent Suspine,[5] while it was served

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[1] *Rollo,* pp. 15-25; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Mariano C. Del Castillo and Vicente S.E. Veloso.

[2] *Id.* at 36-39; penned by Judge Eugene C. Paras.

[3] Penned by Judge Rommel O. Baybay.

[4] *Rollo,* pp. 34-35.

[5] Records, Process Server's Return dated April 4, 2000.

on respondent corporation and received by Samuel D. Marcoleta of its Receiving Section on April 3, 2000.[6]

On May 19, 2000, petitioner filed a Motion to Declare Defendants in Default; however, on June 28, 2000, respondent corporation filed an Omnibus Motion (And Opposition to Plaintiff's Motion to Declare Defendant in Default) alleging that summons was improperly served upon it because it was made to a secretarial staff who was unfamiliar with court processes; and that the summons was received by Mr. Armando C. Ordoñez, President and General Manager of respondent corporation only on June 24, 2000. Respondent corporation asked for an extension of 15 days within which to file an Answer.

Pending resolution of its first motion to declare respondents in default, petitioner filed on June 30, 2000 a Second Motion to Declare Defendants in Default.

On July 26, 2000, respondent corporation filed a Motion to Admit Answer alleging honest mistake and business reverses that prevented them from hiring a lawyer until July 10, 2000, as well as justice and equity. The Answer with Counterclaim specifically denied liability, averred competency on the part of respondent Suspine, and due selection and supervision of employees on the part of respondent corporation, and argued that it was Maximo Mata who was at fault.

On August 25, 2000, the Metropolitan Trial Court of Makati City, Branch 66, issued an Order admitting the answer and setting the case for pre-trial, thus:

> When this case was called for the hearing of Motion, the Court's attention was brought to the Answer filed by the defendant.
>
> WHEREFORE, in order to afford the defendants a day in Court, defendant's answer is admitted and the pre-trial is set for October 17, 2000 at 8:30 in the morning.
>
> SO ORDERED.

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[6] *Id.*, *Sheriff's* Return dated April 4, 2000.

Petitioner moved for reconsideration but it was denied. Thus, it filed a petition for *certiorari* and *mandamus* with prayer for preliminary injunction and temporary restraining order before the Regional Trial Court of Makati City. Petitioner claimed that the Metropolitan Trial Court gravely abused its discretion in admitting the answer which did not contain a notice of hearing, contrary to Sections 4 and 5, Rule 15 of the Rules of Court. It also assailed respondent corporation's Omnibus Motion for being violative of Section 9, Rule 15 because while it sought leave to file an answer, it did not attach said answer but only asked for a 15-day extension to file the same. Petitioner also averred that assuming the Omnibus Motion was granted, the Motion to Admit Answer and the Answer with Counterclaim were filed 26 days beyond the extension period it requested.

On October 16, 2000, the Regional Trial Court of Makati City, Branch 58 issued a temporary restraining order, and on May 22, 2001, issued a writ of preliminary injunction. On September 21, 2005, the Regional Trial Court rendered a Decision[7] granting the petition, thus:

> WHEREFORE, premises considered, the petition for *certiorari* and *mandamus* is hereby **GRANTED**. The Orders of public respondent dated August 25, 2000 and September 26, 2000 are hereby **SET ASIDE**. The writ of preliminary injunction issued by this Court on May 22, 2001 is hereby made permanent.
>
> The case is hereby remanded to the court *a quo* to act on petitioner's (plaintiff's) "Second motion to declare defendants in Default" dated June 29, 2000.
>
> SO ORDERED.

Respondent corporation moved for reconsideration but it was denied; hence, it appealed to the Court of Appeals which rendered the assailed Decision dated July 17, 2006, thus:

> By and large, We find no abuse of discretion committed by the first level court in the contested orders.

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[7] *Rollo*, pp. 36-39.

IN VIEW OF ALL THE FOREGOING, the instant appeal is hereby **GRANTED**, the challenged RTC Decision dated September 21, 2005 is hereby **REVERSED and SET ASIDE**, and a new one entered **REINSTATING** the Orders dated August 25, 2000 and September 26, 2000 of the Metropolitan Trial Court of Makati City. No pronouncement as to cost.

SO ORDERED.

Petitioner's motion for reconsideration was denied. Hence, the instant petition raising the following issues:

I. WHETHER THERE WAS VALID SERVICE OF SUMMONS ON DEFENDANT AC ORDONEZ CONSTRUCTION CORPORATION.

II. WHETHER A PARTY WITHOUT CORPORATE EXISTENCE MAY FILE AN APPEAL.

III. WHETHER THIS COURT ERRED IN NOT CALLING THE PARTIES INTO MEDIATION.

IV. WHETHER THERE WAS FRAUD COMMITTED BY THE PETITIONER IN ITS PLEADINGS.

The petition lacks merit.

Section 11, Rule 14 of the Rules of Court provides:

SEC. 11. Service upon domestic private juridical entity. — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

Section 11, Rule 14 sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid.

The designation of persons or officers who are authorized to receive summons for a domestic corporation or partnership is limited and more clearly specified in the new rule. The phrase

'agent, or any of its directors' has been conspicuously deleted.[8] Moreover, the argument of substantial compliance is no longer compelling. We have ruled that the new rule, as opposed to Section 13, Rule 14 of the 1964 Rules of Court, is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have done so in clear and concise language. Absent a manifest intent to liberalize the rule, strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure is required.[9]

Thus, the service of summons to respondent corporation's Receiving Section through Samuel D. Marcoleta is defective and not binding to said corporation.

Moreover, petitioner was served with a copy of the Sheriff's Return which states:

> 3. MANNER OF SERVICE: DULY SERVED thru SAMUEL D. MARCOLETA (receiving section-A.C. Ordonez Construction Corp.,) and who was authorized by A. C. Ordonez Construction Corp., management to receive such court processes.

On its face, the return shows that the summons was received by an employee who is not among the responsible officers enumerated by law. Such being invalid, petitioner should have sought the issuance and proper service of new summons instead of moving for a declaration of default.

Consequently, the motions for declaration of default filed on May 19, 2000 and June 30, 2000 were both premature.

Thus, there was no grave abuse of discretion when the Metropolitan Trial Court admitted respondent corporation's Answer. Although it was filed beyond the extension period requested by respondent corporation, however, Sec. 11, Rule 11 grants discretion to the trial court to allow an answer or other

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[8] *Villarosa v. Benito*, 370 Phil. 921, 929 (1999).

[9] *Mason v. Court of Appeals*, 459 Phil. 689, 698 (2003).

pleading to be filed after the reglementary period, upon motion and on such terms as may be just. An answer should be admitted where it had been filed before the defendant was declared in default and no prejudice is caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.[10]

There is likewise no merit in petitioner's claim that respondent corporation lacks legal personality to file an appeal. Although the cancellation of a corporation's certificate of registration puts an end to its juridical personality, Sec. 122 of the Corporation Code, however provides that a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three years after its dissolution for purposes of prosecuting and defending suits by and against it and to enable it to settle and close its affairs.[11] Moreover, the rights of a corporation, which is dissolved pending litigation, are accorded protection by law pursuant to Sec. 145 of the Corporation Code, to wit:

> Section 145. Amendment or repeal. **No right or remedy in favor of or against any corporation**, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, **shall be removed or impaired either by the subsequent dissolution of said corporation** or by any subsequent amendment or repeal of this Code or of any part thereof. (Emphasis ours)

Dissolution or even the expiration of the three-year liquidation period should not be a bar to a corporation's enforcement of its rights as a corporation.[12]

Finally, the decision to refer a case to mediation involves judicial discretion. Although Sec. 9 B, Rule 141 of the Rules of Court, as amended by A. M. No. 04-2-04-SC, requires the

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[10] *Delos Santos v. Carpio*, G.R. No. 153696, September 11, 2006, 501 SCRA 390, 403.

[11] *Pepsi-Cola Products Philippines, Inc. v. Court of Appeals*, G.R. No. 145855, November 24, 2004, 443 SCRA 580, 594.

[12] *Knecht v. United Cigarette Corporation*, 433 Phil. 380, 395 (2002).

payment of ₱1,000.00 as mediation fee *upon the filing* of a mediatable case, petition, special civil action, comment/answer to the petition or action, and the appellee's brief, the final decision to refer a case to mediation still belongs to the *ponente*, subject to the concurrence of the other members of the division.

As clarified by A. M. No. 04-3-15 (Revised Guidelines for the Implementation of Mediation in the Court of Appeals) dated March 23, 2004:

II. SELECTION OF CASES

Division Clerks of Court, with the assistance of the Philippine Mediation Center (PMC), shall identify the **pending cases** to be referred to mediation for the approval either of the *Ponente* for completion of records, or, the *Ponente* for decision. **Henceforth**, the petitioner or appellant shall specify – by writing or by stamping on the right side of the caption of the initial pleading (under the case number) that the case is mediatable.

Any party who is interested to have the appealed case mediated may also submit a **written request in any form** to the Court of Appeals. If the case is eligible for mediation, the *Ponente*, with the concurrence of the other members of the Division, shall refer the case to the PMC. (Emphasis ours)

Thus, for cases pending at the time the said guidelines were issued, the Division Clerks of Court, with the assistance of the Philippine Mediation Center, shall identify the cases to be referred to mediation. Thereafter, the petitioner or appellant shall specify, by writing or by stamping on the right side of the caption of the initial pleading (under the case number), that the case is mediatable. Further, any party who is interested to have the appealed case mediated may also submit a "written request in any form to the Court of Appeals." In the instant case, petitioner failed to write or stamp the notation "mediatable" on its Memorandum of Appeal. Moreover, it failed to submit any written request for mediation.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated July 17, 2006 reinstating the August 25, 2000 and September 26, 2000 Orders of the Metropolitan Trial Court of Makati City, Branch 66 which

admitted respondent corporation's Answer and set the case for pre-trial, as well as the Resolution dated October 12, 2006 denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178196. August 6, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUDY BUDUHAN *y* BULLAN and ROBERT BUDUHAN *y* BULLAN,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A WITNESS IN OPEN COURT DESERVES MORE CREDENCE THAN THE STATEMENTS MADE DURING THE PRELIMINARY INVESTIGATION OF THE CASE.—** As between statements made during the preliminary investigation of the case and the testimony of a witness in open court, the latter deserves more credence. Preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination, not of guilt beyond reasonable doubt, but of probable cause prior to the filing of an information in court. It is the statements of a witness in open court which deserve careful consideration.

2. **ID.; ID.; ID.; HOW WITNESS IMPEACHED BY EVIDENCE OF INCONSISTENT STATEMENTS; THE RULE THAT REQUIRES A SUFFICIENT FOUNDATION TO BE FIRST LAID BEFORE INTRODUCING EVIDENCE OF INCONSISTENT STATEMENTS OF A WITNESS IS FOUNDED UPON COMMON SENSE AND IS ESSENTIAL**

TO PROTECT THE CHARACTER OF THE WITNESS.— In any event, Section 13, Rule 132 of the Revised Rules on Evidence, on the matter of inconsistent statements by a witness, is revealing. The rule that requires a sufficient foundation to be first laid before introducing evidence of inconsistent statements of a witness is founded upon common sense and is essential to protect the character of a witness. His memory is refreshed by the necessary inquiries, which enable him to explain the statements referred to and to show that they were made by mistake, or that there was no discrepancy between them and his testimony.

3. **ID.; ID.; ID.; RULE ON LAYING SUFFICIENT FOUNDATION, NOT COMPLIED WITH; WITNESS WAS NOT GIVEN AN OPPORTUNITY TO PROVIDE AN EXPLANATION ON THE ALLEGED INCONSISTENCIES IN HER IDENTIFICATION OF APPELLANTS WHICH LEFT THE COURT WITHOUT ANY BASIS TO EVALUATE AND ASSESS HER CREDIBILITY.—** In the present case, the statements made by Cherry Rose during the preliminary investigation with respect to the identities of the accused were not related to her during the trial. Indeed, it is only during the appeal of this case that appellants pointed out the supposed inconsistencies in Cherry Rose's identification of the appellants in order to destroy her credibility as a witness. No opportunity was ever afforded her to provide an explanation. Without such explanation, whether plausible or not, we are left with no basis to evaluate and assess her credibility, on the rationale that it is only when no reasonable explanation is given by a witness in reconciling her conflicting declarations that she should be deemed impeached.

4. **ID.; ID.; ID.; CREDIBILITY OF WITNESS STANDS UNIMPEACHED; APPELLANTS WERE NOT ABLE TO ADDUCE ANY REASON OR MOTIVE FOR HER TO BEAR FALSE WITNESS AGAINST THEM.—** In this regard, what the defense brought to Cherry Rose's attention during the trial were her contradictory statements about her romantic relationship with Larry Erese. As a result of this confrontation, Cherry Rose changed her answer. We rule, however, that this inconsistency relates only to an insignificant aspect of the case and does not involve a material fact in dispute. Inasmuch as the above-stated mandatory procedural requirements were

not complied with, the credibility of Cherry Rose as a witness stands unimpeached. As found by the trial court, the testimony of Cherry Rose was straightforward throughout. The appellants were not able to adduce any reason or motive for her to bear false witness against them. As a matter of fact, Cherry Rose testified during cross-examination that she did not personally know appellant Robert, and that she had first seen him only during the night when the shooting incident took place.

5. **ID.; EVIDENCE; DEFENSE OF ALIBI; REQUIREMENTS OF TIME AND PLACE, NOT MET; NO CLAIM OF ANY FACT THAT WOULD SHOW THAT IT WAS WELL NIGH IMPOSSIBLE FOR APPELLANTS TO BE PRESENT AT THE *LOCUS CRIMINIS*.—** The defense of appellants of alibi is at best weak when faced with the positive identification of the appellants by the prosecution's principal witness. It is elemental that for alibi to prosper, the requirements of time and place must be strictly met. This means that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time. In the present case, there was absolutely no claim of any fact that would show that it was well nigh impossible for appellants to be present at the *locus criminis.* In fact, they all testified that they were going towards the vicinity of the area of the shooting incident when the police apprehended them. The testimonies of Robert Buduhan and Boyet Ginyang were also markedly inconsistent on the material date as to when the witnesses in the shooting incident identified them. Robert Buduhan testified that the three lady witnesses came to identify them at the municipal jail on the evening of 26 July 1998. However, in the direct examination of Boyet Ginyang, he testified that said witnesses arrived on the morning of 25 July 1998. This fact only tends to lend suspicion to their already weak alibi.

6. **ID.; ID.; NEGATIVE FINDINGS OF PARAFFIN TEST ARE NOT CONCLUSIVE TO THE ISSUE OF WHETHER OR NOT THE SUBJECTS DID FIRE A GUN; THE POSITIVE AND NEGATIVE RESULTS CAN BE INFLUENCED BY CERTAIN FACTORS AFFECTING THE CONDITIONS SURROUNDING THE USE OF THE FIREARM.—** Appellants likewise cannot rely on the negative findings of Police Inspector Chua-Camarao on the paraffin tests conducted

in order to exculpate themselves. The said witness herself promptly stated that paraffin test results are merely corroborative of the major evidence offered by any party, and they are not conclusive with respect to the issue of whether or not the subjects did indeed fire a gun. As previously mentioned, the positive and negative results of the paraffin test can also be influenced by certain factors affecting the conditions surrounding the use of the firearm, namely: the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

7. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS OF THE CRIME.—** To warrant conviction for the crime of robbery with homicide, one that is primarily classified as a crime against property and not against persons, the prosecution has to firmly establish the following elements: (1) the taking of personal property with the use of violence or intimidation against the person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, is committed.

8. **ID.; ID.; ID.; SO LONG AS THE INTENTION OF THE FELON IS TO ROB, THE KILLING MAY OCCUR BEFORE, DURING OR AFTER THE ROBBERY; IT IS IMMATERIAL THAT DEATH WOULD SUPERVENE BY MERE ACCIDENT, OR THAT THE VICTIM OF HOMICIDE IS OTHER THAN THE VICTIM OF ROBBERY, OR THAT TWO OR MORE PERSONS ARE KILLED.—** In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide. The original design must have been robbery; and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate, the robbery. The taking of the

property should not be merely an afterthought, which arose subsequently to the killing.

9. ID.; ID.; ID.; ELEMENT OF *ANIMUS LUCRANDI* OR INTENT TO GAIN; THE UNLAWFUL ACT OF TAKING THE VICTIM'S WATCH AT GUNPOINT AFTER THE DECLARATION OF A HOLD-UP SPEAKS WELL ENOUGH OF ITSELF.— Quite obvious from the testimony of Cherry Rose is that the act of appellant Robert and his companion in blue T-shirt of poking their guns towards Larry and Romualde, respectively, and the announcement of a hold-up were what caused Larry to give his watch to Robert. At this point, there already occurred the taking of personal property that belonged to another person, which was committed with violence or intimidation against persons. Likewise, the intent to gain may already be presumed in this case. *Animus lucrandi* or intent to gain is an internal act, which can be established through the overt acts of the offender. The unlawful act of the taking of Larry's watch at gunpoint after the declaration of a hold-up already speaks well enough for itself. No other intent may be gleaned from the acts of the appellant's group at that moment other than to divest Larry of his personal property.

10. ID.; ID.; ID.; THE COURTS BELOW COMMITTED A MISTAKE IN CONVICTING APPELLANTS SEPARATELY OF THE CRIME OF HOMICIDE FOR THE DEATH OF ONE OF THE VICTIMS; ONCE A HOMICIDE IS COMMITTED BY REASON OR ON THE OCCASION OF ROBBERY, THE FELONY COMMITTED IS THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.— The two courts below committed a mistake, however, in convicting the appellants separately of the crime of Homicide for the death of Romualde Almeron. It bears stressing that in the special complex crime of Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.

11. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; SHOWN BY THE

CONCURRENCE OF THE APPELLANT'S ACTS.— The appellants acted in conspiracy in perpetrating the crimes charged. As found by the trial court, conspiracy was proved by the concurrence of the following facts: that the four men were together when they entered the RML canteen; that they occupied the same table; that they were all armed during that time; that while the robbery was in progress, neither Rudy nor the one in blue T-shirt with black jacket prevented the robbery or the killing of the victims; that all four fired their firearms when the robbery was going on and that they fled all together and were seen running by the police before they were intercepted just a few meters from the scene of the crime. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient. As the fatal shooting of both Larry Erese and Romualde Almeron happened on the occasion of the robbery and was subsequent thereto, both of the appellants must be held liable for the crime of Robbery with Homicide on two counts.

12. **ID.; ID.; THE TRIAL COURT AND APPELLANT COURT CORRECTLY IMPOSED THE PENALTY OF *RECLUSION PERPETUA*.—** The prescribed penalty for Robbery with Homicide under Article 294 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. In accordance with Article 63 of the Revised Penal Code, when the law prescribes a penalty composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. The RTC and the Court of Appeals thus correctly imposed the penalty of *reclusion perpetua.*

13. **ID.; CIVIL LIABILITY; MORAL DAMAGES; GRANT THEREOF IN CASE AT BAR IS JUSTIFIED EVEN IN THE ABSENCE OF PROOF FOR ENTITLEMENT TO THE SAME.—** We agree with the Court of Appeals' grant of moral damages in this case even in the absence of proof for the entitlement to the same. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's

family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. The heirs of Erese and Almeron are thus entitled to moral damages in the amount of ₱50,000.00 each.

14. **ID.; ID.; ACTUAL DAMAGES; AWARD OF TEMPERATE DAMAGES FOR ₱25,000.00 IS JUSTIFIED IN LIEU OF PROVEN ACTUAL DAMAGES IN THE AMOUNT OF ₱18,000.00; WHEN ACTUAL DAMAGES PROVEN BY RECEIPTS DURING THE TRIAL AMOUNT TO LESS THAN ₱25,000.00, THE AWARD OF TEMPERATE DAMAGES OF ₱25,000.00 IS JUSTIFIED.—** On the award of actual damages, we hold that the heirs of Larry Erese are entitled to the award of temperate damages for ₱25,000.00, in lieu of the lower amount of ₱18,000 that was substantiated by a receipt. In *People v. Villanueva,* we have laid down the rule that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00, then temperate damages may no longer be awarded. Actual damages based on the receipts presented during trial should instead be granted.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for defendants-appellants.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a review of the Decision[1] of the Court of Appeals dated 29 December 2006 in CA-G.R. CR-HC No. 01940, which affirmed with modifications the Decision[2] dated 24 July 2003

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[1] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr. concurring; *rollo*, pp. 3-13.

[2] Penned by Judge Menrado V. Corpuz; CA *rollo*, pp. 27-41.

of the Regional Trial Court (RTC) of Maddela, Quirino, Branch 38, in Criminal Case No. 38-18, finding accused-appellants Robert Buduhan *y* Bullan and Rudy Buduhan *y* Bullan guilty of the special complex crime of robbery with homicide with respect to the deceased Larry Erese, and of the crime of homicide with respect to the deceased Romualde Almeron. The Court of Appeals ordered the payment of moral damages to the heirs of said victims, in addition to the award already given by the trial court.

On 26 August 1998, an Information[3] was filed against Robert Buduhan, Rudy Buduhan, Boy Guinhicna, Boyet Ginyang and 3 John Does before the RTC of Maddela, Quirino, for the crime of Robbery with Homicide and Frustrated Homicide. Docketed as Criminal Case No. 38-18, the accusatory portion of the information provides:

> That on or about 10:40 o'clock in the evening of July 24, 1998 in Poblacion Norte, Municipality of Maddela, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, four of them are armed and after first conspiring, confederating and mutually helping one another and with force and violence did then and there willfully, unlawfully and feloniously rob ROMUALDE ALMERON of his wallet and wrist watch and LARRY ERESE of his wrist watch to the damage and prejudice of the said ROMUALDE ALMERON and LARRY ERESE;
>
> That on the occasion of the Robbery, the said accused, armed with firearms of different caliber and after first conspiring, confederating and mutually helping one another did then and there willfully, unlawfully and feloniously, shoot and fire upon ROMUALDE ALMERON, LARRY ERESE and ORLANDO PASCUA resulting to their instanteneous (sic) death and the injuries to the persons of FERNANDO PERA and GILBERT CORTEZ.

On 20 October 1998, the accused filed a Motion to Quash[4] the above information, alleging that the court did not legally acquire jurisdiction over their persons. The accused contended they were neither caught *in flagrante delicto*, nor did the police

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[3] CA *rollo*, pp. 13-14.

[4] Records, Vol. 1, pp. 73-74.

have personal knowledge of the commission of the offense at the time when their warrantless arrests were effected.[5]

In an Order dated 25 August 1999, the RTC denied the above motion on the ground that the assertion of lack of personal knowledge on the part of the arresting officers regarding the commission of the crime is a matter of defense, which should be properly taken up during the trial.[6]

When arraigned on 12 January 2000, the accused Rudy Buduhan, Robert Buduhan and Boyet Ginyang, with the assistance of their *counsel de oficio*, entered their pleas of "Not Guilty" to the crime charged.[7] With respect to accused Boy Guinhicna, counsel for the accused informed the trial court of his death and thus moved for the dismissal of the charges against him.[8]

On the same date, the pre-trial conference was terminated and both parties agreed on the following stipulation of facts, namely:

1. That the incident transpired at about 10:40 in the evening of July 24, 1998;

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[5] RULES OF COURT, Rule 113, Section 5 provides the instances when a warrantless arrest may be lawfully made, to wit:

SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[6] Records, Vol. 1, pp. 94-95.

[7] *Id.* at 116.

[8] *Id.* at 114.

2. That the incident happened at Poblacion Norte, Maddela, Quirino;

3. That no firearm has been confiscated from any of the accused.[9]

Upon the submission of accused Boy Guinhicna's Certificate of Death,[10] the RTC dismissed the case against him on 14 February 2000.[11] Thereafter, trial of the case ensued.

The prosecution presented the following witnesses: (1) Cherry Rose Salazar, an employee of the establishment where the crime was committed[12] (2) Senior Police Officer 1 (SPO1) Leo Saquing, a police officer at the Maddela Police Station who investigated the crime committed[13]; (3) Dr. Fernando T. Melegrito, the medical examiner who conducted the autopsies on the bodies of the victims[14]; (4) Myrna Almeron, the widow of the victim Romualde Almeron[15]; and (5) Laurentino Erese, Sr., the father of the victim Larry Erese.[16]

The defense, on the other hand, presented: (1) appellant Robert Buduhan[17]; (2) accused Boyet Ginyang[18]; (3) Police Inspector Ma. Leonora Chua-Camarao, a Forensic Chemist of the Philippine National Police (PNP) Crime Laboratory at Camp Crame, Quezon City[19]; (4) appellant Rudy Buduhan[20]; and (5) Reynaldo Gumiho,

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[9] *Id.*

[10] *Id.* at 89.

[11] *Id.* at 125.

[12] TSN, 14 February 2000.

[13] TSN, 12 April 2000.

[14] TSN, 15 February 2000.

[15] TSN, 16 February 2000.

[16] *Id.*

[17] TSN, 23 May 2002.

[18] TSN, 19 June 2002.

[19] TSN, 9 July 2002.

[20] TSN, 23 August 2002.

an eyewitness who was allegedly present at the scene of the crime shortly before the incident in question occurred.[21]

The People's version of the incident as narrated by its principal witness, Cherry Rose Salazar (Cherry Rose), is as follows:

On 24 July 1998, Cherry Rose was working as a guest relations officer at the RML Canteen, a beerhouse and a videoke bar in Maddela, Quirino.[22] At about 9:00 to 10:00 p.m., there were only two groups of men inside the beerhouse.[23] The group that went there first was that of the appellants,[24] which was composed of Robert Buduhan, who was wearing a white T-shirt marked Giordano,[25] Rudy Buduhan, who was wearing a red T-shirt,[26] a man wearing a blue T-shirt,[27] and another man wearing a blue T-shirt with a black jacket.[28] The second group was composed of Larry Erese and his companions Gilbert Cortez (*alias* Abe) and Fernando Pera (*alias* Nanding).

At 10:40 p.m., while Cherry Rose was entertaining the group of Larry Erese, Robert approached them and poked a gun at Larry.[29] Immediately, the man wearing a blue T-shirt likewise approached Cherry Rose's Manager Romualde Almeron (*alias* Eddie), who was seated at the counter.[30] The man in blue poked a gun at Romualde and announced a hold-up.[31] Larry then handed over his wristwatch to Robert. Instantaneously, all four men from Robert's group fired their guns at Larry and Romualde,

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[21] TSN, 10 January 2003.

[22] TSN, 14 February 2000, p. 7.

[23] *Id.* at 24.

[24] *Id.* at 35.

[25] Exhibit "A" for the prosecution.

[26] TSN, 14 February 2000, p. 13.

[27] *Id.* at 11.

[28] *Id.* at 12.

[29] *Id.* at 9.

[30] *Id.* at 11, 39.

[31] *Id.* at 14.

which caused them to fall down.[32] Abe and Nanding ran out of the RML Canteen when the shooting occurred, and Cherry Rose hid below the table.[33]

SPO1 Leo T. Saquing[34] testified that on 24 July 1998, at 11:00 p.m., he and SPO4 Alex M. Gumayagay were detailed as duty investigators at the Maddela Police Station when Eddie Ancheta, a fireman, reported to them a shooting incident at the RML Canteen in Barangay Poblacion Norte, Maddela, Quirino. SPO1 Saquing and SPO4 Gumayagay then proceeded to the said place. About 50 meters from the scene of the crime, they encountered four male individuals who were running away therefrom.[35] The policemen immediately halted the men and asked them where they came from. When they could not respond properly and gave different answers, the policemen apprehended them and brought them to the Maddela Police Station for questioning and identification.[36] Afterwards, the policemen went back to the RML Canteen to conduct an investigation therein.[37] Later that night, the witnesses[38] of the shooting incident went to the police station and they positively pointed to the four persons, later identified as Robert Buduhan, Rudy Buduhan, Boy Guinhicna and Boyet Ginyang, as the assailants in the said incident.[39]

Dr. Fernando Melegrito,[40] the Chief of Hospital at the Maddela Hospital, testified that he conducted the autopsies on the bodies

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[32] *Id.* at 17.

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

[34] TSN, 12 April 2000, pp. 3-16.

[35] Joint Affidavit of SPO3 Alex M. Gumayagay and SPO1 Leo T. Saquing, Exhibit "M" for the Prosecution, Records, Vol. 1, p. 15.

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

[37] *Id.* at 16.

[38] Cherry Rose Salazar, Maureen Pasion and Marveloza Lopez. (TSN, 12 April 2000, p. 15.)

[39] TSN, 12 April 2000, p. 5.

[40] TSN, 15 February 2000, pp. 4-5.

of the victims Romualde Almeron, Larry Erese and Orlando Pascua.[41] With respect to Romualde, Dr. Melegrito found that the former sustained a gunshot wound ½ x ½ centimeter in diameter, one inch above the right nipple, perforating the fourth rib of the right chest, penetrating the superior aspect of the right lung, the aorta of the heart, the midportion of the left lung and exited through the back, two inches below the lower portion of the left scapular region.[42] These findings were also contained in Romualde Almeron's Autopsy Report.[43] From the nature of the wound, Dr. Melegrito concluded that the victim was near and was in front of the assailant when he was fatally shot.

As regards Larry Erese, Dr. Melegrito testified that said victim sustained a gunshot wound ½ x ½ centimeter in diameter in the sternal region of the chest, between the third left and right rib, perforating the arch of the aorta of the heart and penetrating the subcutaneous tissue of the left lower back at the level of the seventh rib, where a slug (bullet)[44] was extracted.[45] These findings were likewise contained in Larry Erese's Autopsy Report.[46]

Concerning the victim Orlando Pascua, Dr. Melegrito testified that the gunshot wound that the former sustained resulted into a massive disruption of the lung.[47] As presented in Pascua's Autopsy Report,[48] the gunshot wound was 1 x 1 inch in diameter,

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[41] The circumstances of Orlando Pascua's death were not testified to by any of the witnesses for the prosecution during the trial. It was during the preliminary investigation of the case before the sala of the Municipal Circuit Trial Judge Moises M. Pardo when Maureen Pasion, an employee of the RML Canteen, narrated how the assailants shot Orlando Pascua. (Records, Vol. 1, pp. 46-49). The prosecution no longer presented said witness.

[42] TSN, 15 February 2000, p. 4.

[43] Exhibit "D" for the Prosecution, Records, Vol. 1, p. 59.

[44] Exhibit "F" for the Prosecution.

[45] TSN, 15 February 2000, p. 5.

[46] Exhibit "E" for the Prosecution, Records, Vol. 1, p. 60.

[47] TSN, 15 February 2000, p. 6.

[48] Exhibit "G" for the Prosecution, Records, Vol. 1, p. 122.

perforating the midportion of the fourth rib of the left chest, macerating the three-fourth (3/4) portion of the left lung, and penetrating the subcutaneous tissues of the left back at the level of the third and fourth ribs, then the fourth and fifth ribs where pellets were extracted therein.

Myrna Almeron[49] testified that as a result of the untimely death of her husband Romualde Almeron, which fact was evidenced by a Death Certificate,[50] she incurred expenses for funeral services in the amount of ₱38,000.00 and expenses during her husband's wake in the amount of ₱25,000.00. She also claimed that during the night of the shooting incident, Romualde brought with him the amount of ₱50,000.00 in his wallet, but the same was no longer recovered. Among these figures, however, Myrna Almeron was only able to present a receipt for the expenses for funeral services[51] and only in the amount of ₱26,000.00.

Laurentino Erese testified that during the wake of his deceased son, whose death was evidenced by a Death Certificate,[52] he incurred funeral expenses for Larry in the amount of ₱18,000.00.[53] From the wake to the first death anniversary, the total expenses were claimed to be more or less ₱100,000.00.[54] However, only the receipt for the above funeral services[55] was offered.

The prosecution did not present the other surviving victims in the shooting incident, namely Gilbert Cortez and Fernando Pera. The latter were fearful of reprisals from unknown individuals. No evidence was likewise adduced on their behalf. Also, the other employees who worked as guest relations officers

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[49] TSN, 16 February 2000, pp. 6-9.

[50] Exhibit "I" for the Prosecution, Records, Vol. 2, p. 339.

[51] Exhibit "J" for the Prosecution, Records, Vol. 2, p. 340.

[52] Exhibit "K", *id.* at 341.

[53] TSN, 16 February 2000, p. 18.

[54] *Id.* at 17.

[55] Exhibit "L" for the Prosecution.

in the RML Canteen and who likewise witnessed the incident were said to have absconded already.[56]

For the defense, appellant Robert Buduhan[57] testified that on the evening of 24 July 1998, he was at their boarding house in Poblacion, Maddela, Quirino, together with Rudy Buduhan, Boyet Ginyang, and Boy Guinhicna. The group drank one bottle of San Miguel Gin, and then went to sleep. Unknown to him and Guinhicna, Rudy and Ginyang still went out to continue their drinking sessions. While he was sleeping, Ginyang arrived and woke him up. Ginyang told him that they had to go to the beerhouse where he (Ginyang) and Rudy had been to because something might have happened to Rudy, as there was a fight there. Robert, Ginyang and Guinhicna then proceeded to look for Rudy. On their way there, at the junction of the National Highway, they encountered some policemen who asked them where they were headed. When Robert said that they were looking for Rudy, the policemen told them to board the police vehicle and the group was given a ride. As it turned out, Robert's group was taken to the Municipal Jail of Maddela where they were detained. The policemen went out to look for Rudy and they likewise put him in jail. The following day, the policemen confiscated the shirts worn by the group. They were also taken to Santiago City where paraffin tests were conducted. On the evening of 26 July 1998, the policemen went to the jail with three ladies who were asked to identify Robert's group. The ladies, however, did not recognize Robert and his companions.

Boyet Ginyang[58] testified that on 24 July 1998, at 10:00 p.m., he and Rudy went to a beerhouse in Maddela, Quirino. After ordering some drinks and chatting, they suddenly heard gunshots from the outside. Looking towards the direction of the sound, he saw somebody fall to the ground and at that point, he and Rudy ran to get away from the place. While running towards their boarding house, Rudy was stopped by an unknown armed

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[56] Records, Vol. 1, pp. 205-206.

[57] TSN, 23 May 2002, pp. 7-26.

[58] TSN, 19 June 2002, pp. 8-20.

person in a white T-shirt. When Ginyang reached the boarding house, he roused appellant Robert and Guinhicna from their sleep and asked them to go with him and search for Rudy. Upon reaching the junction at the National Highway, they were halted by a man who asked where they were heading. After hearing their story, the man said they should wait for a vehicle that would help them look for Rudy. When the vehicle arrived, he and the others were brought to the municipal jail. Thereafter, Rudy was likewise picked up by the police and detained with the group. On the morning of 25 July 1998, three ladies were brought to the municipal jail to identify his group, but the former did not recognize them. On the morning of 26 July 1998, Ginyang and his three companions were brought to Santiago City where they were made to undergo paraffin testing. Afterwards, the group was brought back to the municipal jail in Maddela, Quirino. Ginyang also testified that the policemen took the shirts they wore on the night of 24 July 1998, but he could not remember when they did.

Police Inspector Maria Leonora Chua-Camarao[59] testified that she was the one who conducted the examination proper of the paraffin casts taken from Robert Buduhan, Rudy Buduhan, Boyet Ginyang and Boy Guinhicna. She likewise brought before the trial court the original Letter Request[60] of the Maddela Police Station for the conduct of paraffin casting; the Letter of Request[61] addressed to the Officer-in-Charge of the PNP Crime Laboratory in Region 2 for the conduct of paraffin examination; and the paraffin casts of subjects Rudy, Ginyang, Guinhicna and Robert.[62] Police Inspector Chua-Camarao explained that the purpose of conducting a paraffin test was to determine the presence of gunpowder residue in the hands of a person through extraction using paraffin wax. The process involves two stages: first, the

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[59] TSN, 9 July 2002, pp. 6-12.

[60] Exhibit "2" for the Defense, CA *rollo*, p. 92.

[61] Exhibit "2-A" for the Defense, Records, Vol. 2, p. 312.

[62] Exhibits "2-B", "2-C", "2-D", and "2-E", respectively, Records, Vol. 2, pp. 313-327.

paraffin casting, in which the hands of the subject are covered with paraffin wax to extract gunpowder residue; and second, the paraffin examination *per se*, which refers to the actual chemical examination to determine whether or not gunpowder residue has indeed been extracted. For the second stage, the method used is the diphenyl amine test, wherein the diphenyl amine agent is poured on the paraffin casts of the subject's hands. In this test, a positive result occurs when blue specks are produced in the paraffin casts, which then indicates the presence of gunpowder residue. When no such reaction takes place, the result is negative.

The findings and conclusion on the paraffin test that Police Inspector Chua-Camarao conducted were contained in Physical Science Report No. C-25-98[63] which yielded a negative result for all the four accused. Nonetheless, the forensic chemist pointed out that the paraffin test is merely a corroborative evidence, neither proving nor disproving that a person did indeed fire a gun. The positive or negative results of the test can be influenced by certain factors, such as the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.[64]

Appellant Rudy Buduhan testified that at past 10:00 p.m. of 24 July 1998, he and Ginyang went to a beerhouse. Shortly after ordering their drinks, they heard gunshots, and a person seated near the door fell. They then ran towards the road.[65] While running, an armed man wearing a white T-shirt held him, while Ginyang was able to get away.[66] After a while, the police arrived and they took him to the Maddela police station where he was jailed along with Robert, Ginyang and Guinhicna.[67] The

[63] Exhibit "1" for the Defense, Records, Vol. 1, p. 310.

[64] TSN, 9 July 2002, pp. 13-16.

[65] TSN, 23 August 2002, p. 7.

[66] TSN, 9 July 2002, pp. 8-9.

[67] *Id.* at 10-11.

rest of his testimony merely corroborated the testimonies of Robert and Ginyang.

Reynaldo Gumiho (Reynaldo)[68] testified that on the evening of 24 July 1998, he was in Poblacion, Maddela, Quirino, for a business transaction involving the sale of a 6x6 truck with a certain *alias* Boy. At about 8:00 p.m., Reynaldo and Boy proceeded to a beerhouse in Maddela. After settling with their drinks, Reynaldo heard a group of five men near their table who were conversing and he recognized from the accent of their voices that they were from Lagawe (Ifugao). One of the men then told him that they should leave after finishing their drinks because the former were looking for someone who killed their relative. Reynaldo disclosed that he recognized one of the persons whom he usually saw in Lagawe, and that the group was composed of relatively tall people who were mostly wearing jackets. Not long after, Reynaldo and Boy left the beerhouse so as not to get involved in any trouble. Two days after he left Maddela, Reynaldo learned of the shooting incident in the beerhouse.

In a Decision dated 24 July 2003, the trial court found appellants guilty of the charges, the dispositive portion of which reads:

WHEREFORE, premises considered, the court renders judgment as follows:

1) Finding accused Robert and Rudy, both surnamed Buduhan, GUILTY beyond reasonable doubt of the special complex crime of Robbery with Homicide (Par. 1 Article 294 of the Revised Penal Code) with respect to the deceased Larry Erese and sentences each of them to suffer the penalty of *reclusion perpetua*;

2) As to the victim Romualde Almeron, the court also finds them GUILTY beyond reasonable doubt of Homicide (Article 249 of the Revised Penal Code) and sentences each of them to the indeterminate penalty of 12 years of *Prision Mayor* as minimum to 20 years of *Reclusion Temporal* as maximum;

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[68] TSN, 10 January 2003, pp. 3-10.

However, they shall be entitled to a deduction of their preventive imprisonment from the term of their sentences in accordance with Article 29 of the Revised Penal Code, as amended by R.A. No. 6127.

3) To pay jointly the heirs of Larry Erese the amount of ₱50,000.00 as civil indemnity, ₱25,000 as exemplary damages, ₱18,000 as actual expenses and ₱5,000 as temperate damages; and the heirs of Mr. Almeron: ₱50,000 as civil indemnity, ₱25,000 as exemplary damages, ₱38,000.00 as actual expenses and ₱5,000.00 as temperate damages.

With costs against them.

However, with respect to accused Boyet Ginyang, the court ACQUITS him of the offense charged since the prosecution had failed to overcome, with the required quantum of evidence, the constitutional presumption of innocence. Consequently, the Chief of the BJMP, Cabarroguis, Quirino, is hereby ordered to immediately release him from confinement unless being held for some other lawful cause; and to make a report hereon within three (3) days from receipt hereof.[69]

On 1 August 2003, the appellants filed a Notice of Appeal[70] raising questions of law and facts.

On 7 June 2004, the Court initially resolved to accept the appeal, docketed as G.R. No. 159843,[71] and required the appellants to file their Brief.[72]

However, on 5 October 2005, we resolved to transfer the case to the Court of Appeals in view of our ruling in *People v. Mateo*.[73] The case was then docketed as CA-G.R. CR-HC No. 01940.

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[69] CA *rollo,* pp. 40-41.

[70] *Id.* at 42.

[71] *Id.* at 44.

[72] *Id.* at 46.

[73] In the said case, we ruled thus:

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before

On 29 December 2006, the Court of Appeals rendered its decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the July 24, 2003 Decision of the Regional Trial Court of Maddela, Quirino, Branch 38, in Civil Case No. 39-18, is hereby **MODIFIED** only in that, in addition to the award already given by the trial court, in consonance with current jurisprudence, the heirs of ERESE are also entitled to moral damages of ₱50,000 and in addition to the award already given by the trial court, the heirs of ALMERON are also entitled to moral damages of ₱50,000.00.
>
> Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.[74]

From the Court of Appeals, the case was then elevated to this Court for automatic review. In a Resolution[75] dated 5 September 2007, we required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice.

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the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. **If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition**. (G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656). (Emphasis ours).

[74] *Rollo,* pp. 12-13.

[75] *Id.* at 18.

In a Manifestation[76] filed on 30 October 2007, the People informed the Court that it will no longer file a supplemental brief, as the arguments raised by appellants had already been discussed in the brief[77] filed before the Court of Appeals.

Appellants, on the other hand, filed their supplemental brief on 28 November 2007.

As a final plea for their innocence, appellants ask this Court to consider the following assignment of errors:

I.

IN GIVING COMPLETE CREDENCE TO THE TESTIMONY OF THE PRINCIPAL WITNESS OF THE PROSECUTION DESPITE THE PRESENCE OF FACTS TAINTING THE CREDIBILITY OF THE WITNESS.

II.

IN DISREGARDING THE DEFENSE OF THE APPELLANTS, WHICH WAS CORROBORATED BY THE FINDINGS OF THE FORENSIC CHEMIST.

III.

IN FAILING TO MAKE A DIRECT RULING ON THE MOTION OF THE ACCUSED TO QUASH THE INFORMATION ON THE GROUND THAT THE ARREST OF THE ACCUSED WITHOUT A WARRANT OF ARREST IS ILLEGAL AS THERE WAS NO PERSONAL KNOWLEDGE OF THE ARRESTING OFFICERS REGARDING THE COMMISSION OF THE CRIME.

To state differently, appellants argue that their guilt was not proven beyond reasonable doubt in view of the trial court's error in the appreciation of the evidence for and against them. They fault the trial court's over-reliance on the testimony of the prosecution's main witness and its failure to consider the glaring inconsistencies in Cherry Rose's previous accounts of the shooting incident.

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[76] *Id.* at 19-21.

[77] CA *rollo*, pp. 103-119.

The appeal lacks merit.

Appellants insist that Cherry Rose is not a credible witness in view of the conflicting answers she gave in her sworn statement before the police,[78] in the preliminary investigation of the case and in her testimony in open court. They contend that the trial court failed to scrutinize the entirety of the statements made by Cherry Rose *vis-à-vis* the shooting incident.

Appellants called attention to the fact that during the preliminary investigation of the case, Cherry Rose stated that a man wearing a white Giordano T-shirt shot Larry after Larry handed his wristwatch.[79] Thereafter, when Cherry Rose was asked whom she saw wearing a white Giordano T-shirt, she pointed to Boy Guinhicna.[80] With respect to appellant Robert Buduhan, Cherry Rose identified him as the one who shot Orlando Pascua.[81]

In the testimony of Cherry Rose in open court, however, she identified appellant Robert as the man who was wearing a white Giordano T-shirt and who shot Larry Erese.[82]

Also, in Cherry Rose's sworn statement before the police, she narrated that the group of the appellants, consisting of five persons, was already inside the RML Canteen before the shooting incident occured.[83] However, in her direct examination, Cherry Rose stated that appellant Robert had only three other companions.[84]

Finally, in the preliminary investigation, appellants pointed out that Cherry Rose unhesitatingly admitted that Larry Erese

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[78] Exhibit "C-C2" for the Prosecution, records, Vol. 1, pp. 10-12.

[79] Minutes of the Preliminary Investigation, records, Vol. 1, p. 43.

[80] *Id.* at 44.

[81] *Id.* at 45.

[82] TSN, 14 February 2000, p. 9, 15.

[83] Sworn Statement of Cherry Rose Salazar, Exhibit "C-C2" for the Prosecution, records, Vol. 1, p. 11.

[84] TSN, 14 February 2000, p. 10.

was her intimate boyfriend and that was why she embraced him after the latter was shot.[85]

In her cross-examination, however, Cherry Rose stated that Larry was only a customer and not her boyfriend.[86] When questioned about her prior statement about this fact given during the preliminary investigation, Cherry Rose changed her answer and said that Larry was indeed her boyfriend.[87]

Taking all these circumstances into account, appellants argue that, judging from the conflicting statements of Cherry Rose, the identification of the accused is highly doubtful.

We are not persuaded.

As between statements made during the preliminary investigation of the case and the testimony of a witness in open court, the latter deserves more credence. Preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination, not of guilt beyond reasonable doubt, but of probable cause prior to the filing of an information in court. It is the statements of a witness in open court which deserve careful consideration.[88]

In any event, Section 13, Rule 132 of the Revised Rules on Evidence, on the matter of inconsistent statements by a witness, is revealing:

> Section 13. *How witness impeached by evidence of inconsistent statements*. — Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

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[85] Minutes of the Preliminary Investigation, records, Vol. 1, pp. 43-44.

[86] TSN, 14 February 2000, p. 29.

[87] *Id.* at 30-33.

[88] *People v. Villanueva*, G.R. No. 96469, 21 October 1992, 215 SCRA 22, 28-29.

The rule that requires a sufficient foundation to be first laid before introducing evidence of inconsistent statements of a witness is founded upon common sense and is essential to protect the character of a witness. His memory is refreshed by the necessary inquiries, which enable him to explain the statements referred to and to show that they were made by mistake, or that there was no discrepancy between them and his testimony.[89]

In the present case, the statements made by Cherry Rose during the preliminary investigation with respect to the identities of the accused were not related to her during the trial. Indeed, it is only during the appeal of this case that appellants pointed out the supposed inconsistencies in Cherry Rose's identification of the appellants in order to destroy her credibility as a witness. No opportunity was ever afforded her to provide an explanation. Without such explanation, whether plausible or not, we are left with no basis to evaluate and assess her credibility, on the rationale that it is only when no reasonable explanation is given by a witness in reconciling her conflicting declarations that she should be deemed impeached.[90]

In this regard, what the defense brought to Cherry Rose's attention during the trial were her contradictory statements about her romantic relationship with Larry Erese. As a result of this confrontation, Cherry Rose changed her answer. We rule, however, that this inconsistency relates only to an insignificant aspect of the case and does not involve a material fact in dispute.

Inasmuch as the above-stated mandatory procedural requirements were not complied with, the credibility of Cherry Rose as a witness stands unimpeached. As found by the trial court, the testimony of Cherry Rose was straightforward throughout. The appellants were not able to adduce any reason or motive for her to bear false witness against them. As a matter of fact, Cherry Rose testified during cross-examination that she did not personally know appellant Robert, and that she

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[89] *People v. de Guzman*, 351 Phil. 587, 596 (1998).

[90] *Id.* at 596-597.

had first seen him only during the night when the shooting incident took place.[91]

As the trial judge who penned the assailed decision did not hear the testimonies of the witnesses for the prosecution,[92] the rule granting finality to the factual findings of trial courts does not find applicability to the instant case.[93]

After a careful review of the entire records of this case, the Court finds no reason to disagree with the factual findings of the trial court that all the elements of the crime of Robbery with Homicide were present and proved in this case.

Robbery with Homicide is penalized under Article 294, paragraph 1 of the Revised Penal Code,[94] which provides:

> 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.

To warrant conviction for the crime of robbery with homicide, one that is primarily classified as a crime against property and not against persons, the prosecution has to firmly establish the following elements: (1) the taking of personal property with the use of violence or intimidation against the person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on the occasion

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[91] TSN, 14 February 2000, pp. 35-36.

[92] The Honorable Theresa Dela Torre-Yadao heard the prosecution witnesses' testimonies before the Honorable Menrado V. Corpuz took over and eventually penned the decision.

[93] See *People v. Navarro*, 357 Phil. 1010, 1024 (1998).

[94] As amended by paragraph 1 of Section 9 of Republic Act No. 7659 (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).

of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, is committed.[95]

In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.[96]

The original design must have been robbery; and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate, the robbery. The taking of the property should not be merely an afterthought, which arose subsequently to the killing.[97]

With respect to the elements of the crime, the following excerpts from the direct testimony of Cherry Rose clearly illustrates the same, *viz*:

PROVINCIAL PROSECUTOR FERDINAND D. ORIAS —

Q: At that night of July 24, 1998 at around 10:40 in the evening, what were you doing at RML Canteen?

A: I was entertaining a costumer sir. (*nakatable*)

x x x x x x x x x

Q: Who was that person who requested you to entertain him?

A: Larry Erese sir.

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[95] *People v. Lara*, G.R. No. 171449, 23 October 2006, 505 SCRA 137, 154, citing *People v. Del Rosario*, 411 Phil. 676, 685 (2001).

[96] *People v. Cabbab, Jr.*, G.R. No. 173479, 12 July 2007, 527 SCRA 589, 604, citing *People v. De Jesus,* G.R. No. 134815, 27 May 2004, 429 SCRA 384, 403.

[97] *People v. Lara*, *supra* note 95, citing *People v. Consejero*, 404 Phil. 914, 932-933 (2001).

Q: Do you recall if this Larry Erese have a companions (sic) that time?

A: Yes, sir.

Q: Name them?

A: Abe *at* Nanding sir.

Q: That night while you were entertaining them, this three (3) what transpired next?

A: An Ifugao approached us sir and he poke a gun at Larry Erese sir.

Q: And what did Larry Erese do when a gun was poke at him?

A: He gave his wrist watch sir.

Q: To whom did Larry Erese gave his wrist watch?

A: To the Ifugao who poke a gun at him sir.

x x x x x x x x x

Q: Will you please go around and see if he is inside the courtroom and point at him?

A: The witness is pointing to a man [seated] at the back bench of the court and when asked about his name he answered Robert Buduhan.

x x x x x x x x x

Q: What was the attire of Robert Buduhan at that time?

A: White T-shirt sir.

Q: Can you name or can you recall any particular description of that T-shirt worn by Robert Buduhan at that time?

x x x x x x x x x

A: It was marked with Giordano sir.

x x x x x x x x x

Q: When Robert Buduhan approached Larry Erese and Larry Erese gave his wrist watch, do you recall if Robert Buduhan have a companions (sic) at that time?

A: There was sir.

Q: How many of them?

A: Four (4) sir.

x x x x x x x x x

Q: Where are these companions of Robert Buduhan at the time Robert Buduhan poke a gun at Larry Erese?

A: The other one was there to my Manager [Romualde] Eddie Almeron sir.

Q: What was the attire of this person who approached Eddie Almeron, your Manager?

A: He was in blue sir.

x x x x x x x x x

Q: He wore blue T-shirt?

A: Yes, sir.

x x x x x x x x x

Q: What about the other two (2) companions of Robert Buduhan where are they?

A: They were inside sir.

Q: The first of the two (2) what is the attire?

A: Color red sir.

Q: What about the last one?

A: He was in blue T-shirt and with black jacket sir.

x x x x x x x x x

Q: The person in red T-shirt whom you claim the companion of Robert Buduhan, can you identify him?

A: Yes, sir.

x x x x x x x x x

Q: Stand and point at him?

A: Witness pointed one of the accused sitting infront and when asked about his name he answered Rudy Buduhan.

x x x x x x x x x

Q: You mention about a person wearing blue T-shirt who approached your Manager Eddie Almeron. What did he do first before he approached your Manager if [any]?

A: He poke a gun at our Manager sir.

Q: What did he tell to you (sic) Manager if any while poking a gun?

A: Holdup sir.

Q: Are they simultaneous in approaching Larry Erese and Eddie Almeron, this person in blue T-shirt and the accused Robert Buduhan?

A: No, sir. Robert Buduhan approached first.

Q: And then the person in blue T-shirt likewise approached Eddie Almeron?

A: Yes, sir.

x x x x x x x x x

Q: What transpired first before Larry Erese gave his wrist watch. The announcement of holdup or the giving of his wrist watch?

A: The announcement of the holdup comes first sir.

Q: When Larry Erese gave his watch to Robert Buduhan with Robert Buduhan poking a gun at Larry Erese, what transpired next?

A: They fired sir.

Q: Who fired?

A: All of them sir.

x x x x x x x x x

Q: You mentioned a while ago that Robert Buduhan poke a gun at Larry Erese?

A: Yes, sir.

Q: Do you know the caliber of the gun?

A: It looks like a 38 but it is long sir.

Q: You likewise mention that the person in blue T-shirt poke a gun at Eddie Almeron?

A: Yes, sir.

Q: What about the person in red?

A: It looks like an armalite sir.

Q: What about the person in blue T-shirt with black jacket?

A: Armalite sir.

Q: When Rudy Buduhan fired his gun was there any person who was hit?

A: There was sir.

Q: Name that person?

A: Larry Erese sir.

Q: When the person in blue T-shirt who was poking a gun at Eddie Almeron fired his gun was there any person who was hit?

A: There was sir.

Q: Who was that person who was hit?

A: Eddie Almeron sir.

x x x x x x x x x

Q: How far is Robert Buduhan from Larry Erese when Robert Buduhan fired his gun?

A: He was arms like sir.

Q: You mention also about a person in blue T-shirt fired a gun at Eddie Almeron. How far was he from Eddie Almeron when he fired his gun?

A: The witness pointed to a place in the courtroom.

x x x x x x x x x

COURT —

About 2 to 3 meters?

PROVINCIAL PROSECUTOR FERDINAND D. ORIAS —

Yes, 2 to 3 meters.

x x x x x x x x x

Q: Do you know what happened to Larry Erese?

A: Yes, sir.

Q: Where is he now?

A: He was dead already sir.

Q: What about Eddie Almeron. Do you know what happened to him?

A: He was also dead sir.[98]

Quite obvious from the foregoing testimony is that the act of appellant Robert and his companion in blue T-shirt of poking their guns towards Larry and Romualde, respectively, and the announcement of a hold-up were what caused Larry to give his watch to Robert. At this point, there already occurred the taking of personal property that belonged to another person, which was committed with violence or intimidation against persons.

Likewise, the intent to gain may already be presumed in this case. *Animus lucrandi* or intent to gain is an internal act, which can be established through the overt acts of the offender.[99] The unlawful act of the taking of Larry's watch at gunpoint after the declaration of a hold-up already speaks well enough for itself. No other intent may be gleaned from the acts of the appellant's group at that moment other than to divest Larry of his personal property.

The appellants acted in conspiracy in perpetrating the crimes charged. As found by the trial court, conspiracy was proved by the concurrence of the following facts: that the four men were together when they entered the RML canteen; that they occupied the same table; that they were all armed during that

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[98] TSN, 14 February 2000, pp. 8-18.

[99] *People v. Gavina*, 332 Phil. 488, 495 (1996).

time; that while the robbery was in progress, neither Rudy nor the one in blue T-shirt with black jacket prevented the robbery or the killing of the victims; that all four fired their firearms when the robbery was going on and that they fled all together and were seen running by the police before they were intercepted just a few meters from the scene of the crime.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy.[100] Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.[101]

As the fatal shooting of both Larry Erese and Romualde Almeron happened on the occasion of the robbery and was subsequent thereto, both of the appellants must be held liable for the crime of Robbery with Homicide on two counts.

The defense of appellants of alibi is at best weak when faced with the positive identification of the appellants by the prosecution's principal witness. It is elemental that for alibi to prosper, the requirements of time and place must be strictly met. This means that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[102] In the present case, there was absolutely no claim of any fact that would show that it was well nigh impossible for appellants to be present at the *locus criminis*. In fact, they all testified that they were going towards the vicinity of the area of the shooting incident when the police apprehended them.

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[100] *People v. Ponce*, 395 Phil. 563, 571-572 (2000).

[101] *Id.*

[102] *People v. Fuertes*, 357 Phil. 603, 612-613 (1998).

The testimonies of Robert Buduhan and Boyet Ginyang were also markedly inconsistent on the material date as to when the witnesses in the shooting incident identified them. Robert Buduhan testified that the three lady witnesses came to identify them at the municipal jail on the evening of 26 July 1998.[103] However, in the direct examination of Boyet Ginyang, he testified that said witnesses arrived on the morning of 25 July 1998.[104] This fact only tends to lend suspicion to their already weak alibi.

Appellants likewise cannot rely on the negative findings of Police Inspector Chua-Camarao on the paraffin tests conducted in order to exculpate themselves. The said witness herself promptly stated that paraffin test results are merely corroborative of the major evidence offered by any party, and they are not conclusive with respect to the issue of whether or not the subjects did indeed fire a gun. As previously mentioned, the positive and negative results of the paraffin test can also be influenced by certain factors affecting the conditions surrounding the use of the firearm, namely: the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

Lastly, the persistent claim of appellants of the illegality of their warrantless arrest, due to the lack of personal knowledge on the part of the arresting officers, deserves scant consideration. As aptly stated in *People v. Salazar*,[105] granting *arguendo* that appellants were illegally arrested, such arrest did not invest these eyewitness accounts with constitutional infirmity as "fruits of the poisonous tree." Considering that their conviction could be secured on the strength of the testimonial evidence given in open court, which are not inadmissible in evidence, the court finds no reason to further belabor the matter.

A determination of the appropriate imposable penalties is now in order.

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[103] TSN, 23 May 2002, p. 20.

[104] TSN, 19 June 2002, p. 15.

[105] 342 Phil. 745 (1997).

The prescribed penalty for Robbery with Homicide under Article 294 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. In accordance with Article 63 of the Revised Penal Code, when the law prescribes a penalty composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied.

The RTC and the Court of Appeals thus correctly imposed the penalty of *reclusion perpetua*.

As regards the charge for the death of Orlando Pascua and the injuries sustained by Fernando Pera and Gilbert Cortez, the trial court aptly held that the prosecution failed to substantiate the same. No witnesses were presented to testify as to the circumstances leading to the said incidents, and neither were they proved to be caused by the criminal actions of the appellants.

The two courts below committed a mistake, however, in convicting the appellants separately of the crime of Homicide for the death of Romualde Almeron. It bears stressing that in the special complex crime of Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.[106]

As to the award of damages, we hold that the heirs of Larry Erese and Romualde Almeron are each entitled to the amount of ₱50,000.00 as civil indemnity *ex delicto*. This award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[107]

We agree with the Court of Appeals' grant of moral damages in this case even in the absence of proof for the entitlement to

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[106] *People v. Jabiniao*, G.R. No. 179499, 30 April 2008.

[107] *People v. Opuran*, 469 Phil. 698, 720 (2004).

the same. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing.[108] The heirs of Erese and Almeron are thus entitled to moral damages in the amount of ₱50,000.00 each.

On the award of actual damages, we hold that the heirs of Larry Erese are entitled to the award of temperate damages for ₱25,000.00, in lieu of the lower amount of ₱18,000 that was substantiated by a receipt. In *People v. Villanueva*, [109] we have laid down the rule that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00, then temperate damages may no longer be awarded. Actual damages based on the receipts presented during trial should instead be granted.

However, with respect to the award of the amount of ₱38,000.00 to the heirs of Romualde Almeron, the same is incorrect since the receipt presented therefor covers only the amount of ₱26,000.00. The award of actual damages should be reduced accordingly. The grant of temperate damages to the heirs of Almeron is thus deleted.

The award of exemplary damages is likewise deleted, as the presence of any aggravating circumstance was neither alleged nor proved in this case.[110]

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[108] *People v. Piedad*, 441 Phil. 818, 839 (2002), cited in *People v. Rubiso*, 447 Phil. 374, 383 (2003).

[109] 456 Phil. 14, 29 (2003).

[110] Article 2230 of the Civil Code provides:

> ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

WHEREFORE, premises considered, the decision dated 29 December 2006 of the Court of Appeals in CA-G.R. CR-HC No. 01940 is hereby *MODIFIED* as follows:

1. For the death of Larry Erese, appellants Robert Buduhan *y* Bullan and Rudy Buduhan *y* Bullan are found *GUILTY* beyond reasonable doubt of Robbery with Homicide and sentenced each to suffer the penalty of *reclusion perpetua*.

2. For the death of Romualde Almeron, appellants Robert Buduhan *y* Bullan and Rudy Buduhan *y* Bullan are found *GUILTY* beyond reasonable doubt of Robbery with Homicide and sentenced each to suffer the penalty of *reclusion perpetua*.

3. Appellants shall be entitled to a deduction of their preventive imprisonment from the term of their sentences in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

4. Appellants are ordered to indemnify jointly and severally the heirs of Larry Erese as follows: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱25,000.00 as temperate damages.

5. Appellants are ordered to indemnify jointly and severally the heirs of Romualde Almeron as follows: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱26,000.00 as actual damages.

6. For reasons herein stated, appellants are *ACQUITTED* of the separate crime of Homicide for the death of Romualde Almeron.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181245. August 6, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JIMMY ANG @ ANG TIAO LAM and HUNG CHAO NAN,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT; SINCE APPELLANT WAS CHARGED WITH VIOLATION OF SECTION 6 (1) AND (m), THERE IS NO MORE NO NEED TO PROVE WHETHER HE IS A LICENSEE OR NOT BECAUSE IT IS NO LONGER AN ELEMENT OF THE CRIME.—** Appellant conceded in his Brief that the prosecution satisfactorily established that he engaged in the act of recruitment and placement of workers for deployment abroad. It was likewise proven that the private complainants were never deployed to Taiwan as factory workers. Moreover, it was also settled that he received certain amounts allegedly to be used to cover the expenses for the documentation and processing of the complainants' papers, but said amounts were never reimbursed to them despite their non-deployment and repeated demands. However, appellant argued that he cannot be held liable for illegal recruitment because it was not shown that he has not secured a license or authority to recruit or deploy workers. This contention lacks basis. It is clearly provided in Section 6 of Republic Act No. 8042 that **any person, whether a non-licensee, non-holder, licensee or holder of authority** may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Since appellant was charged with violation of Sec. 6 (l) and (m), there is no more need to prove whether he is a licensee or not because it is no longer an element of the crime. The trial court and the Court of Appeals therefore correctly found appellant guilty as charged.
2. **ID.; ID.; ID.; APPELLANT IS GUILTY OF ILLEGAL RECRUITMENT IN LARGE SCALE BECAUSE IT WAS COMMITTED AGAINST THE FOUR PRIVATE**

COMPLAINANTS; ILLEGAL RECRUITMENT COMMITTED BY A SYNDICATE OR IN LARGE SCALE IS CONSIDERED AN OFFENSE INVOLVING ECONOMIC SABOTAGE.— In the instant case, appellant is guilty of illegal recruitment in large scale because it was committed against the four private complainants. This is in accordance with the penultimate paragraph of Section 6 of Republic Act No. 8042 which provides, thus: Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.** The trial court, as affirmed by the Court of Appeals, imposed upon the appellant the penalty of life imprisonment and a fine of ₱100,000.00 plus actual damages, with interest thereon. However, the fine of ₱100,000.00 should be increased to ₱500,000.00 pursuant to Section 7 (b) of Republic Act No. 8042 which reads, thus: (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein. Illegal recruitment committed by a syndicate or in large scale is considered an offense involving economic sabotage.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

YNARES-SANTIAGO, *J*.:

This petition for review on *certiorari* assails the September 20, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C.

[1] *Rollo*, pp. 2-21; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Lucenito N. Tagle and Sixto C. Marella, Jr.

No. 02374, affirming the Judgment[2] of the Regional Trial Court of Manila, Branch 12, in Crim. Case No. 00-184050, finding appellant Jimmy Ang @ Ang Tiao Lam & Hung Chao Nan guilty of illegal recruitment in large scale and sentencing him to suffer the penalty of life imprisonment and to pay a fine of One Hundred Thousand Pesos (₱100,000.00) plus actual damages,[3] with the modification that appellant is further ordered to pay legal interest on the award of actual damages from the time of the filing of the *Information* until fully paid.

The facts of the case are as follows:

On June 28, 2000, appellant was charged with violation of Section 6 (l) and (m) of Republic Act No. 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*. The accusatory portion of the Information reads:

That in or about and during the period comprised between November 1999 and June 23, 2000, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating with another whose true name, real identity and present whereabouts is unknown and mutually helping each other, representing themselves to have the capacity to contract, hire, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment as factory workers in Taiwan, and in consideration thereof charge and accept, directly or indirectly from the following:

PHEX M. GARLEJO	₱ 20,000.00
EDNA PARAGAS	₱115,000.00
SPOUSES MAGDALENO DIOSDADO S. ORDONIO & MARLENE G. ORDONIO	₱150,000.00
ELLEN B. CANLAS	₱ 50,000.00

as placement and/or processing fee for overseas employment which amounts are greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment and failed

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[2] CA *rollo*, pp. 18-54; penned by Judge Ruben Reynaldo G. Roxas.

[3] In the amounts of ₱20,000.00, ₱115,000.00, ₱150,000.00 and ₱50,000.00 in favor of private complainants Phex M. Garlejo, Edna Paragas, Sps. Magdaleno S. Ordonio and Marlene G. Ordonio and Ellen B. Canlas, respectively.

to actually deploy them without valid reasons and failed to reimburse expenses incurred by them, despite demands and in spite of the fact that the deployment of the said PHEX M. GARLEJO, EDNA PARAGAS, Sps. MAGDALENO DIOSDADO S. ORDONIO & MARLENE G. ORDONIO and ELLEN B. CANLAS did not actually take place without their fault.

Contrary to law.[4]

Appellant pleaded not guilty when arraigned.

Ellen Canlas testified that on January 17, 2000, she was introduced to appellant who promised her a job as factory worker in Taiwan. Canlas was interested in working abroad thus, she gave appellant the amount of ₱50,000.00 which would be used allegedly to defray the expenses for the processing of her papers. Appellant issued Canlas a receipt for ₱50,000.00.

Edna Paragas also testified that she met appellant in November, 1999. Lured by the promise of a job in Taiwan, Paragas gave appellant a total amount of ₱115,000.00 for which she was issued a receipt. She was told that the money would be spent for the processing of her papers.

Marlene Ordonio also applied for a job in Taiwan through appellant. She gave him the amount of ₱150,000.00 to be used allegedly for the processing of her papers. Appellant issued a receipt for the said amount.

Phex M. Garlejo also paid ₱20,000.00 to appellant who promised him a job as a factory worker in Taiwan.

When appellant failed to deploy the private complainants as factory workers in Taiwan, they decided to file a complaint before the Philippine Overseas Employment Agency (POEA) who endorsed them to the Philippine Anti-Organized Crime Task Force (PAOCTF). Since appellant was asking for additional funds from Garlejo, an entrapment operation was planned.

On June 23, 2000, Canlas, Paragas, Ordonio and Garlejo met appellant inside Universal Restaurant along Rizal Avenue,

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[4] CA *rollo*, p. 8.

Manila. After Garlejo handed to appellant the envelope containing the marked money, appellant issued a receipt for ₱30,000.00. Thereafter, he proceeded to count the money whereupon he was arrested by the PAOCTF operatives.

Appellant, who was the sole witness for the defense, testified that he was a factory worker in Taiwan. Sometime in October 1999, he met Erolyn Bello and Marlene Ordonio who requested him to look for a broker in Taiwan who will affiliate with a local recruitment agency for the deployment of factory workers. When he returned to Taiwan, he allegedly met a certain Leo Liao who agreed to act as broker.

He admitted meeting private complainants and receiving money from them. However, he alleged that the amounts were in payment for the expenses he incurred in scouting for a broker in Taiwan. He also argued that private complainants did not meet Liao, the alleged broker, because during their scheduled meeting, the private complainants suddenly felt shy.

Finally, he alleged that during the entrapment operation, he was forced by the PAOCTF to sign the acknowledgement receipt; and that he never received the money because he was handcuffed.

After trial on the merits, the trial court rendered judgment, the dispositive portion of which provides:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered finding accused JIMMY ANG also known as ANG TIAO LAM and HUNG CHAO-NAN guilty beyond reasonable doubt of the crime of Illegal Recruitment (in Large Scale). Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of One Hundred Thousand Pesos (₱100,000.00). Moreover, he is hereby ordered to pay actual damages, to the complainants in the following amounts, to wit:

PHEX M. GARLEJO	₱ 20,000.00
EDNA PARAGAS	₱115,000.00
SPOUSES MAGDALENO DIOSDADO S. ORDONIO & MARLENE G. ORDONIO	₱150,000.00
ELLEN B. CANLAS	₱ 50,000.00

SO ORDERED.[5]

Appellant filed an appeal before the Court of Appeals raising the following as errors:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED SINCE NO EVIDENCE WAS PRESENTED BY THE PROSECUTION SHOWING THAT HE HAD NO LICENSE OR AUTHORITY TO RECRUIT BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE).[6]

In his Brief, appellant conceded that the prosecution satisfactorily established that he engaged in the act of recruitment and placement of workers for deployment abroad; however, he argued that he cannot be held liable for illegal recruitment because it was not shown that he has not secured a license or authority to recruit or deploy workers.[7]

The Office of the Solicitor General (OSG) countered that the testimony of the PAOCTF agent's that upon investigation with the POEA, they discovered that appellant is a non-licensee or non-holder of authority to recruit and deploy workers abroad, is sufficient proof that indeed, he is not authorized to engage in recruitment activities. The OSG also recommended that the penalty of fine imposed upon appellant be increased from ₱100,000.00 to ₱500,000.00 and that the award of actual damages should earn interest from the time of the filing of the information until fully paid.

On September 20, 2007, the Court of Appeals rendered the herein assailed Decision, the dispositive portion of which provides:

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[5] *Id*. at 53.

[6] *Id*. at 74-75.

[7] *Id*. at 76.

WHEREFORE, the instant appeal is DISMISSED for lack of merit. The judgment of the court *a quo* dated April 5, 2006 is AFFIRMED with the MODIFICATION that accused-appellant is ORDERED to pay the private complainants legal interest on the following amounts from the time of the filing of the *Information* until fully paid:

1. PHEX M. GARLEJO	₱ 20,000.00
2. EDNA PARAGAS	₱115,000.00
3. SPOUSES MAGDALENO DIOSDADO S. ORDONIO & MARLENE G. ORDONIO	₱150,000.00
4. ELLEN B. CANLAS	₱ 50,000.00

SO ORDERED.[8]

Hence, the instant petition.

On March 5, 2008, this Court resolved to notify the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice.[9] On May 2, 2008, appellant filed a Manifestation and Motion that he is dispensing with the filing of the supplemental brief.[10] On May 7, 2008, the OSG likewise manifested that it is no longer filing its supplemental brief. Hence, this case is now deemed submitted for resolution.

The petition lacks merit.

Appellant was charged with violation of Section 6 (l) and (m) of Republic Act No. 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*, which provides:

SEC. 6. **Definition. —** For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referring contract services, promising or advertising for employment abroad, whether for profit of not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: **Provided,** That any such non-licensee or non-holder

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[8] *Rollo*, p. 21.

[9] *Id.* at 26.

[10] *Id.* at 27.

who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed engaged. **It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non holder, licensee or holder of authority:**

> x x x x x x x x x
>
> (l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and
>
> (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault.
>
> x x x x x x x x x.
> (Emphasis supplied)

Appellant conceded in his Brief that the prosecution satisfactorily established that he engaged in the act of recruitment and placement of workers for deployment abroad. It was likewise proven that the private complainants were never deployed to Taiwan as factory workers. Moreover, it was also settled that he received certain amounts allegedly to be used to cover the expenses for the documentation and processing of the complainants' papers, but said amounts were never reimbursed to them despite their non-deployment and repeated demands. However, appellant argued that he cannot be held liable for illegal recruitment because it was not shown that he has not secured a license or authority to recruit or deploy workers.

This contention lacks basis. It is clearly provided in Section 6 of Republic Act No. 8042 that **any person, whether a non-licensee, non-holder, licensee or holder of authority** may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Since appellant was charged with violation of Sec. 6 (l) and (m), there is no more need to prove whether he is a licensee or not because it is no longer an element of the crime. The trial court and the Court of Appeals therefore correctly found appellant guilty as charged.

In the instant case, appellant is guilty of illegal recruitment in large scale because it was committed against the four private complainants. This is in accordance with the penultimate paragraph of Section 6 of Republic Act No. 8042 which provides, thus:

> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.**

The trial court, as affirmed by the Court of Appeals, imposed upon the appellant the penalty of life imprisonment and a fine of ₱100,000.00 plus actual damages, with interest thereon. However, the fine of ₱100,000.00 should be increased to ₱500,000.00 pursuant to Section 7(b) of Republic Act No. 8042 which reads, thus:

> (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Illegal recruitment committed by a syndicate or in large scale is considered an offense involving economic sabotage.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated September 20, 2007 in CA-G.R. CR-H.C. No. 02374, affirming with modification the Judgment of the Regional Trial Court of Manila, Branch 12, in Crim. Case No. 00-184050, finding appellant Jimmy Ang @ Ang Tiao Lam & Hung Chao Nan guilty of illegal recruitment in large scale and sentencing him to suffer the penalty of life imprisonment and to pay actual damages with legal interest thereon, is *AFFIRMED* with *MODIFICATION* that the penalty of fine is *INCREASED* to ₱500,000.00.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 181467. August 6, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AMBROSIO GOLEAS *y* LIMUEL *a.k.a.* "CLEO" and ALVIN LACABA *y* LIMUEL,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WELL-SETTLED PRINCIPLES IN RESOLVING ISSUES PERTAINING TO CREDIBILITY OF WITNESSES; APPLICATION IN CASE AT BAR.—** In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness. After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we find no cogent reason to overturn the RTC's ruling finding Javier's testimony credible. As an eyewitness to the incident, Javier positively identified appellant Lacaba as the one who held both arms of Lobos; and appellant Goleas as the one who repeatedly stabbed Lobos. His direct account of how appellants helped one another in killing Lobos is candid and convincing.

2. **ID.; ID.; ID.; TESTIMONY OF SINGLE WITNESS IF POSITIVE AND CREDIBLE IS SUFFICIENT TO SUPPORT A CONVICTION EVEN IN THE CHARGE OF MURDER.—** It should be emphasized that the testimony of a single witness, if positive and credible, as in this case, is sufficient to support a conviction even in the charge of murder. The testimonies are consistent with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the

testimonies of Javier, PO1 Taopo and Jessica to be truthful and unequivocal and, as such, prevailed over the denials and alibis of appellants. Both courts also found no ill motive on the part of the prosecution witnesses. It is not incredible for Javier to have identified appellants at a distance of 15-20 meters. Such distance was not that far as to blur Javier's vision of appellants during the incident. In several cases we have decided, the distance of the eyewitness from the crime scene was 15-20 meters away and even more, nevertheless, the eyewitness' identification of the malefactors was found to be credible, accurate and unmistaken. Further, as aptly observed by the Office of the Solicitor General, Javier was familiar with the faces of appellants having known them since childhood, and Javier had a good vision of appellants during the incident since it occurred at about 11:30 a.m. True, Lobos mentioned a certain "Leo" to PO1 Taopo as his assailant. The records, however, show that the "Leo" being referred to by Lobos was appellant Goleas. Javier testified that appellant Goleas was also known by his nickname "Cleo." It should be noted that Lobos sustained multiple stab wounds and was catching his breath when he uttered the nickname of appellant Goleas to PO1 Taopo. Thus, understandably, he could not have spoken clearly in such difficult situation.

3. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY THE MANNER IN WHICH THE VICTIM WAS RESTRAINED AND ASSAULTED WHICH WAS DELIBERATE AND CONSCIOUSLY ADOPTED TO ENSURE HIS DEATH.—** There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from any defensive or retaliatory act which the victim might make. The essence of treachery is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate

or conscious choice of means, methods or manner of execution. Further, this aggravating circumstance must be alleged in the information and duly proven. Lobos was casually driving a *pedicab* when appellants suddenly appeared and blocked his path. To ensure the success of their criminal design, appellant Lacaba held both arms of Lobos while appellant Goleas viciously and repeatedly stabbed Lobos. When Lobos fell on the ground, the appellants ran away. It is clear that Lobos was defenseless during the attack as his hands were restrained by appellant Lacaba, facilitating the repeated stabbing of Lobos by appellant Goleas. Verily, the manner in which Lobos was restrained and assaulted was deliberately and consciously adopted by the appellants to ensure his death.

4. ID.; ID.; ID.; ID.; TREACHERY IS NOT NEGATED BY THE FACT THAT THE KILLING WAS DONE IN BROAD DAYLIGHT AND IN THE PRESENCE OF MANY PEOPLE.— The fact that the killing was done in broad daylight, in the presence of many people and that Lobos saw his assailants approaching, do not negate treachery. We have held that these circumstances do not abrogate treachery as long as the attack was executed in such a manner as to make it impossible for the victim to retaliate or to defend himself. As earlier discussed, both arms of Lobos were immediately held by appellant Lacaba to prevent him from retaliating and, at the same time, to facilitate his stabbing by appellant Goleas. In such a helpless situation, it was impossible for Lobos to repel the attack or escape.

5. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION AND ABUSE OF SUPERIOR STRENGTH; NO PROOF WAS ADDUCED TO PROVE EVIDENT PREMEDITATION; ABUSE OF SUPERIOR STRENGTH IS ABSORBED AND INHERENT IN TREACHERY.— We have observed that the aggravating circumstances of evident premeditation and abuse of superior strength were also alleged in the information. It is a rule of evidence that an aggravating circumstance must be proven as clearly as the crime itself. For evident premeditation to be appreciated as an aggravating circumstance, the following elements must be present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and

the execution of the crime to allow him to reflect upon the consequence of his act and to allow his conscience to overcome the resolution of the will if he desired to hearken to its warning. In the case at bar, no proof was adduced to prove the foregoing elements. Thus, the RTC correctly found that evident premeditation could not be appreciated in the case at bar. The RTC also properly disregarded the aggravating circumstance of abuse of superior strength because it is absorbed and inherent in treachery. As such, it cannot be separately appreciated as an independent aggravating circumstance.

6. **ID.; PENALTIES; *RECLUSION PERPETUA*; PROPER PENALTY IN CASE AT BAR.—** Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it was already considered as a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed. Hence, the RTC acted accordingly in sentencing appellants to *reclusion perpetua.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CHICO-NAZARIO, *J*.:

For review is the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01880, dated 17 July 2007,[1] affirming *in toto* the Decision of the Quezon City Regional Trial Court (RTC),

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; *rollo*, pp. 2-11.

Branch 81, in Criminal Case No. Q-02-113076[2] finding accused-appellants Ambrosio Goleas *y* Limuel (Goleas) *a.k.a.* "Cleo" and Alvin Lacaba *y* Limuel (Lacaba) guilty of murder and imposing upon them the penalty of *reclusion perpetua*.

The facts of the case are as follows:

On 5 November 2002, an Information[3] was filed with the RTC charging appellants with murder. The Information reads:

> That on or about the 2nd day of November 2002, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, with intent to kill, qualified by evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of JERRY LOBOS *y* FAMANIAS, by then and there stabbing him several times with a bladed weapon, hitting him on the chest and other parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said JERRY LOBOS *Y* FAMANIAS.

When arraigned on 4 December 2002, appellants, assisted by their counsel *de oficio,* pleaded "Not guilty" to the charge.[4] Trial on the merits thereafter followed.

The prosecution presented as witnesses Jelly Javier (Javier), Police Officer 1 Jose Taopo (PO1 Taopo) and Jessica Lobos (Jessica). Their testimonies, taken together, bear the following narrative:

On 2 November 2002, at about 8:30 a.m., Javier went to a *sari-sari* store located in front of the Ombudsman Building, Agham Road, Barangay Pagasa, Quezon City, and chatted with some friends. At around 11:30 a.m., he saw Jerry Lobos (Lobos)

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[2] Penned by Judge Ma. Theresa L. Dela Torre-Yadao; records, pp. 147-155.

[3] Records, p. 1.

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

driving a *pedicab* and heading towards the said store. Lobos dropped off his passenger near the store and continued driving. Thereupon, appellants approached Lobos and blocked the latter's path. Appellant Lacaba held both arms of Lobos while appellant Goleas repeatedly stabbed Lobos on different parts of the body. Thereafter, appellants fled.[5]

Javier and some *pedicab* drivers brought Lobos to the Philippine Children's Medical Center (PCMC). PO1 Taopo arrived at the PCMC and asked Lobos to identify his assailants. Lobos uttered "Leo."[6] Subsequently, Jessica, Lobos's live-in partner, came to the PCMC. Lobos told her that appellants attacked and stabbed him.[7]

Later that day, Lobos was transferred to the East Avenue Medical Center where he died at about 4:00 p.m. due to stab wounds.[8]

The prosecution also proffered documentary evidence to buttress the testimonies of its witnesses, to wit: (1) joint-affidavit of PO1 Taopo and other police officers (Exhibit A);[9] (2) sworn statement of Jessica (Exhibit B);[10] (3) sworn statement of Javier (Exhibit C);[11] and (4) death certificate of Lobos (Exhibit D).[12]

For its part, the defense presented the testimonies of appellants to refute the foregoing accusations. Appellants denied any involvement in the incident and interposed the defense of alibi.

Goleas testified that from 8:00 a.m. up to 4:00 p.m. of 2 November 2002, he was at Roxas Street, Barangay Pagasa, Quezon City, selling folding beds. He sold three folding beds

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[5] TSN, 17 February 2003, pp. 2-6.

[6] TSN, 10 March 2003, pp. 2-5.

[7] TSN, 24 March 2003, 1-7.

[8] *Id.*

[9] Records, p. 96.

[10] *Id.* at 97-98.

[11] *Id.* at 99-100.

[12] *Id.* at 101.

before 4:00 p.m. At past 4:00 p.m., four police officers arrested him at Roxas Street and brought him to a nearby precinct. The police officers wanted him to admit killing Lobos but he refused because he did not have anything to do with the incident. Despite being detained and beaten by the police officers, he declined to make a confession regarding the incident.[13]

Lacaba declared that he slept in his house on the whole morning of 2 November 2002. He woke up at about 1:00 p.m. of the same day. Later, two police officers barged in his house and arrested him for killing Lobos. During the investigation, he denied any involvement in the incident but the police officers did not believe him. Thereafter, he was detained.[14]

After trial, the RTC rendered its Decision on 12 September 2005 convicting appellants of murder under Article 248 of the Revised Penal Code. Appellants were sentenced to *reclusion perpetua*. They were also ordered to pay the heirs of Lobos ₱21,000.00 as actual damages, ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Court finds accused AMBROCIO GOLEAS *Y* LIMUEL, *a.k.a.* CLEO and ALVIN LACABA *Y* LIMUEL, GUILTY beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code as amended, both accused are hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. Both accused are further ordered to pay the heirs of the late JERRY LOBOS the total amount of Twenty One Thousand (Php21,000.00) Pesos as actual damages, Fifty Thousand (Php50,000.00) Pesos as moral damages, Fifty Thousand (Php50,000.00) Pesos as civil indemnity and Twenty Five Thousand (Php25,000.00) Pesos as exemplary damages.
>
> Both accused shall be credited in the service of the full time during which they had undergone preventive imprisonment. Let a mitimus (sic) order be issued for service of sentence.[15]

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[13] TSN, 8 December 2003, pp. 2-7; 27 September 2004, p. 3.

[14] TSN, 26 October 2005, pp. 2-5.

[15] Records, p. 155.

Appellants appealed the RTC Decision to the Court of Appeals. On 17 July 2007, the appellate court promulgated its Decision affirming *in toto* the RTC Decision, thus:

> Hence, the lower court correctly found that treachery attended the killing of Lobos which makes accused-appellants Goleas and Lacaba guilty of murder.
>
> WHEREFORE, premises considered, the Decision dated September 12, 2005 of the RTC, Branch 81, Quezon City, in Criminal Case No. Q-02-113076 is hereby AFFIRMED.[16]

Before us, appellants assigned the following errors:

I.

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT THE ACCUSED ARE GUILTY OF KILLING JERRY LOBOS, THE TRIAL COURT ERRED IN CONVICTING THEM FOR MURDER INSTEAD OF HOMICIDE CONSIDERING THAT NEITHER THE QUALIFYING CIRCUMSTANCE OF TREACHERY NOR PREMEDITATION WAS DULY ESTABLISHED. [17]

Anent the first assigned error, appellants put in issue the credibility of Javier's testimony. They maintain that the testimony of Javier regarding the fact that he saw them hold and stab Lobos is incredible. Javier testified that he was fifteen to twenty meters away from the scene when the incident occurred. At such distance, and considering that there were people around, it was impossible for Javier to have identified the attackers of Lobos.[18]

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[16] *Rollo,* p. 10.

[17] CA *rollo*, p. 44.

[18] *Id.* at 49.

Appellants also assert that Lobos pointed to a certain "Leo" as the one who stabbed him.[19]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[20]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we find no cogent reason to overturn the RTC's ruling finding Javier's testimony credible. As an eyewitness to the incident, Javier positively identified appellant Lacaba as the one who held both arms of Lobos; and appellant Goleas as the one who repeatedly stabbed Lobos. His direct account of how appellants helped one another in killing Lobos is candid and convincing, thus:

Q Mr. Witness, can you please tell us where you were on November 2, 2002 at 8:30 in the morning?

A I was at the store together with my friends sir.

Q And, where was that store located, Mr. Witness?

A It was in front of the Ombudsman Building sir.

Q And, where is that Ombudsman Building located?

A It was at Agham Road sir.

Q Of what *barangay*?

A Barangay Pagasa sir.

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[19] *Id.*

[20] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

Q During that time and place Mr. Witness, can you please tell us what was that unusual incident that happened?

A I saw Jerry coming, boarding with his pedicab.

Q And, do you know the surname of Jerry?

A Jerry Lobos sir.

Q You said that Jerry was boarded at his pedicab, whereat?

A He was heading towards us sir.

Q And, while Jerry heading towards you what happened, if any?

A When he was in front of us his passenger alighted and waved his [Lobos] hand to us.

Q And, what happened next after his passenger alighted from his pedicab?

A He was not yet far from us when Jerry was blocked by Alvin and Ambrosio.

Q And what happened after he was blocked by Alvin and Ambrosio?

A When [sic] Alvin blocked him and he was held by the hands.

Q Who held the arms of Jerry?

A It was Alvin who held the hands of Jerry sir.

Q And, how did he held the arms of Jerry?

A He held his two arms sir.

Q What is the position of Alvin to Jerry?

A He was in front of Jerry sir.

Q When Alvin was holding the hands of Jerry, what happened?

A He suddenly stabbed Jerry Lu [Lobos] sir.

Q Who stabbed Jerry Lobos?

A Ambrosio Goleas sir.

Q What happened to Jerry after he was stabbed?

A He struggled sir.

Q And, how many times did Ambrosio stab Jerry?

A Many times sir.

Q And, do you know what kind of instrument or weapon used to stab Jerry?

A I did not see sir but I saw him stabbed Jerry.

Q And, how do you know that you said, that it was Ambrosio who stabbed Jerry?

A Yes sir.

Q And, it was Alvin who held both arms of Jerry?

A Yes sir.

Q If you will see these people again would you be able to identify them?

A Yes sir.

Q Are they present here inside the courtroom?

A Yes sir.

Q If they are present inside the courtroom will you please step down from the witness stand and tap the shoulder of these persons?

COURT INTERPRETER:

At this juncture, the witness is tapping the shoulder of a male person, wearing a yellow T-Shirt and when asked his name he answered Ambrosio Goleas.

The witness also tapped the shoulder of the second man wearing a yellow T-shirt and when asked his name he answered Alvin Lajaba [Lacaba].

FISCAL ANCHETA: (To continue)

Q What happened after Jerry was stabbed by Ambrosio?

A They both ran away sir.[21]

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[21] TSN, 17 February 2003, pp. 2-4.

It should be emphasized that the testimony of a single witness, if positive and credible, as in this case, is sufficient to support a conviction even in the charge of murder.[22]

The foregoing testimonies are consistent with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Javier, PO1 Taopo and Jessica to be truthful and unequivocal and, as such, prevailed over the denials and alibis of appellants. Both courts also found no ill motive on the part of the prosecution witnesses.

It is not incredible for Javier to have identified appellants at a distance of 15-20 meters. Such distance was not that far as to blur Javier's vision of appellants during the incident. In several cases we have decided,[23] the distance of the eyewitness from the crime scene was 15-20 meters away and even more, nevertheless, the eyewitness' identification of the malefactors was found to be credible, accurate and unmistaken.

Further, as aptly observed by the Office of the Solicitor General, Javier was familiar with the faces[24] of appellants having known them since childhood,[25] and Javier had a good vision of appellants during the incident since it occurred at about 11:30 a.m.[26]

True, Lobos mentioned a certain "Leo" to PO1 Taopo as his assailant. The records, however, show that the "Leo" being referred to by Lobos was appellant Goleas.[27] Javier testified

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[22] *Mendoza v. People*, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 690.

[23] *People v. Manalad*, 436 Phil. 37, 45 (2002); *People v. Peleras*, 417 Phil. 536, 548 (2001); *People v. De Leon*, 411 Phil. 338, 352 (2001); *People v. Panes*, 343 Phil. 878, 885-886 (1997); *People v. Alas*, G.R. Nos. 118335-36, 19 June 1997, 274 SCRA 310, 321.

[24] TSN, 24 February 2003, p. 6.

[25] TSN, 17 February 2003, p. 5.

[26] TSN, 24 February 2003, p. 5.

[27] Records, pp. 4 and 96-100.

that appellant Goleas was also known by his nickname "Cleo."[28] It should be noted that Lobos sustained multiple stab wounds and was catching his breath when he uttered the nickname of appellant Goleas to PO1 Taopo. Thus, understandably, he could not have spoken clearly in such difficult situation.

Apropos the second assigned error, appellants argue that there was no treachery in the killing of Lobos because (1) the killing was done in broad daylight and in the presence of several individuals; (2) Lobos was already forewarned of an impending danger to his life since he saw his assailants approaching; (3) there is no evidence that Lobos was cornered; and (4) there was no proof showing that a specific form of attack was deliberately employed to ensure the killing of Lobos.[29]

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from any defensive or retaliatory act which the victim might make. The essence of treachery is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution. Further, this aggravating circumstance must be alleged in the information and duly proven.[30]

Lobos was casually driving a *pedicab* when appellants suddenly appeared and blocked his path. To ensure the success of their

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[28] TSN, 17 February 2003, p. 5.

[29] CA *rollo*, pp. 49-51.

[30] RULES OF COURT, Rule 110, Sections 8 and 9; *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 667.

criminal design, appellant Lacaba held both arms of Lobos while appellant Goleas viciously and repeatedly stabbed Lobos. When Lobos fell on the ground, the appellants ran away.[31] It is clear that Lobos was defenseless during the attack as his hands were restrained by appellant Lacaba, facilitating the repeated stabbing of Lobos by appellant Goleas. Verily, the manner in which Lobos was restrained and assaulted was deliberately and consciously adopted by the appellants to ensure his death.

The fact that the killing was done in broad daylight, in the presence of many people and that Lobos saw his assailants approaching, do not negate treachery. We have held that these circumstances do not abrogate treachery as long as the attack was executed in such a manner as to make it impossible for the victim to retaliate or to defend himself.[32] As earlier discussed, both arms of Lobos were immediately held by appellant Lacaba to prevent him from retaliating and, at the same time, to facilitate his stabbing by appellant Goleas. In such a helpless situation, it was impossible for Lobos to repel the attack or escape.

We have observed that the aggravating circumstances of evident premeditation and abuse of superior strength were also alleged in the information. It is a rule of evidence that an aggravating circumstance must be proven as clearly as the crime itself.[33]

For evident premeditation to be appreciated as an aggravating circumstance, the following elements must be present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the execution of the crime to allow him to reflect upon the consequence of his act and to

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[31] *Mendoza v. People, supra* note 22.

[32] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 658; *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 735; *People v. Guzman*, G.R. No. 169246, 26 January 2007, 513 SCRA 156, 174.

[33] *People v. Discalsota*, 430 Phil. 406, 416 (2002).

allow his conscience to overcome the resolution of the will if he desired to hearken to its warning.[34]

In the case at bar, no proof was adduced to prove the foregoing elements. Thus, the RTC correctly found that evident premeditation could not be appreciated in the case at bar.

The RTC also properly disregarded the aggravating circumstance of abuse of superior strength because it is absorbed and inherent in treachery.[35] As such, it cannot be separately appreciated as an independent aggravating circumstance.[36]

We shall now determine the propriety of the penalties imposed by the RTC on appellants.

Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it was already considered as a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed.[37] Hence, the RTC acted accordingly in sentencing appellants to *reclusion perpetua.*

The award of civil indemnity for the death of Lobos in the amount of ₱50,000.00 and moral damages amounting to ₱50,000.00 were proper since they are mandatory in murder cases without need of proof and allegation other than the death of the victim.[38]

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[34] *Supra* note 24.

[35] *People v. Pirame*, 384 Phil. 286, 300 (2000).

[36] *Id.*

[37] *People v. Guzman*, *supra* note 32.

[38] *People v. Ducabo*, G.R. No. 175594, 28 September 2007, 534 SCRA 458, 473.

Likewise, the award of actual damages in the amount of ₱21,000.00 was in order since this was supported by the records.[39] The heirs of Lobos are also entitled to exemplary damages in the amount of ₱25,000.00 since the qualifying circumstance of treachery was firmly established.[40]

To obviate any question or confusion as regards the penalties imposed, the penalty of *reclusion perpetua* is imposed on each of the appellants and they are jointly and severally liable for the aforementioned damages awarded by the RTC.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals dated 17 July 2007 in CA-G.R. CR-HC No. 01880 is hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

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

EN BANC

[A.M. No. 07-09-13-SC. August 8, 2008]

IN THE MATTER OF THE ALLEGATIONS CONTAINED IN THE COLUMNS OF MR. AMADO P. MACASAET PUBLISHED IN MALAYA DATED SEPTEMBER 18, 19, 20 AND 21, 2007

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[39] Records, p. 155; TSN, 24 March 2003, p. 6; TSN, 13 May 2003, pp. 3-4.

[40] *People v. Ducabo*, *supra* note 38 at 476-477.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; INHERENT POWER TO PUNISH CONTEMPT; PERSONAL ATTACKS, CRITICISMS LADEN WITH POLITICAL THREATS, THOSE THAT MISREPRESENT AND DISTORT THE NATURE AND CONTEXT OF JUDICIAL DECISIONS, THOSE THAT ARE MISLEADING OR WITHOUT FACTUAL OR LEGAL BASIS, AND THOSE THAT BLAME THE JUDGES FOR THE ILLS OF SOCIETY, DAMAGE THE INTEGRITY OF THE JUDICIARY AND THREATEN THE DOCTRINE OF JUDICIAL INDEPENDENCE.—** For sure, judicial criticism can be constructive, uncovering and addressing a problem that merits public attention. Public awareness, debate, and criticism of the courts ensure that people are informed of what they are doing that have broad implications for all citizens. Informed discussion, comment, debate and disagreement from lawyers, academics, and public officials have been hallmarks of a great legal tradition and have played a vital role in shaping the law. But there is an important line between legitimate criticism and illegitimate attack upon the courts or their judges. Attacks upon the court or a judge not only risk the inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities; they also undermine the people's confidence in the courts. Personal attacks, criticisms laden with political threats, those that misrepresent and distort the nature and context of judicial decisions, those that are misleading or without factual or legal basis, and those that blame the judges for the ills of society, damage the integrity of the judiciary and threaten the doctrine of judicial independence. These attacks do a grave disservice to the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy, shaking the very foundation of our democratic government. Such attacks on the judiciary can result in two distinct — yet related — undesirable consequences. First, the criticism will prevent judges from remaining insulated from the personal and political consequences of making an unpopular decision, thus placing judicial independence at risk. Second, unjust criticism of the judiciary will erode the public's trust and confidence in the judiciary as an institution. Both judicial independence and

the public's trust and confidence in the judiciary as an institution are vital components in maintaining a healthy democracy. Accordingly, it has been consistently held that, while freedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy, these freedoms are **not** absolute. For, if left unbridled, they have the tendency to be abused and can translate to licenses, which could lead to disorder and anarchy.

2. **ID.; ID.; ID.; ID.; JUDGES HAVE AN AFFIRMATIVE DUTY TO DEFEND AND UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY; COURTS NEED TO BE ABLE TO SANCTION THOSE WHO OBSTRUCT THEIR PROCESSES.—** Judges have an affirmative duty to defend and uphold the integrity and independence of the judiciary. The courts need to be able to sanction those who obstruct their processes. The judiciary itself must continue to be a voice that explains and preserves its own independence. The respect accorded to judges is an adjunct of the social-contract necessity for impartial judges in the creation of a civil society. In the words of the great political philosopher John Locke — The great and chief end, therefore, for men's uniting into commonwealths, and putting themselves under government, is the preservation of their property, **to which in the state of nature there are many things wanting x x x there wants an established, settled, known law x x x there wants a known and indifferent judge, with authority to determine all differences according to the established law** x x x there often wants power to back and support the sentence when right, and to give it due execution.

3. **ID.; ID.; ID.; ID.; THE PUBLISHED ARTICLES OF RESPONDENT ARE BASELESS SCURRILOUS ATTACKS WHICH DEMONSTRATE NOTHING BUT AN ABUSE OF PRESS FREEDOM; RESPONDENT PUBLISHED HIS HIGHLY SPECULATIVE ARTICLES WITHOUT ANY REGARD TO THE INJURY, SUCH WOULD CAUSE TO THE REPUTATION OF THE JUDICIARY AND THE UNDUE AND IRREPARABLE DAMAGE SUCH FALSE ACCUSATIONS WOULD HAVE ON A MEMBER OF THE COURT.—** We have no problems with legitimate criticisms pointing out flaws in our decisions, judicial reasoning, or even how we run our public offices or public affairs. They should

even be constructive and should pave the way for a more responsive, effective and efficient judiciary. Unfortunately, the published articles of respondent Macasaet are not of this genre. On the contrary, he has crossed the line, as his are baseless scurrilous attacks which demonstrate nothing but an abuse of press freedom. They leave no redeeming value in furtherance of freedom of the press. They do nothing but damage the integrity of the High Court, undermine the faith and confidence of the people in the judiciary, and threaten the doctrine of judicial independence. A veteran journalist of many years and a president of a group of respectable media practitioners, respondent Macasaet has brilliantly sewn an incredible tale, adorned it with some facts to make it lifelike, but impregnated it as well with insinuations and innuendoes, which, when digested entirely by an unsuspecting soul, may make him throw up with seethe. Thus, he published his highly speculative articles that bribery occurred in the High Court, based on specious information, without any regard for the injury such would cause to the reputation of the judiciary and the effective administration of justice. Nor did he give any thought to the undue, irreparable damage such false accusations and thinly veiled allusions would have on a member of the Court.

4. ID.; ID.; ID.; ID.; TO ALLOW RESPONDENT TO USE PRESS FREEDOM AS AN EXCUSE TO CAPRICIOUSLY DISPARAGE THE REPUTATION OF THE COURT AND THAT OF INNOCENT PRIVATE INDIVIDUALS WOULD BE TO MAKE A MOCKERY OF THE SAID LIBERTY.— To reiterate the words of the Committee, this case is "not just another event that should pass unnoticed for it has implications far beyond the allocated ramparts of free speech." To allow respondent to use press freedom as an excuse to capriciously disparage the reputation of the Court and that of innocent private individuals would be to make a mockery of this liberty. Respondent has absolutely no basis to call the Supreme Court a court of "thieves" and a "basket of rotten apples." These publications directly undermine the integrity of the justices and render suspect the Supreme Court as an institution. Without bases for his publications, purely resorting to speculation and "fishing expeditions" in the hope of striking — or creating — a story, with utter disregard for the institutional integrity of the Supreme Court, he has committed acts that degrade and impede the orderly administration of justice.

5. **ID.; ID.; ID.; ID.; RESPONDENT'S STORY REEKED OF URBAN LEGEND, AS IT GENERATED MORE QUESTIONS THAN ANSWERS.—** The confidential information allegedly received by respondent by which he swears with his "heart and soul" was found by the Investigating Committee *unbelievable*. It was a story that reeked of urban legend, as it generated more questions than answers. Respondent Macasaet's wanton disregard for the truth was exhibited by his apathetic manner of verifying the veracity of the information he had gathered for his September 18, 19, 20, and 21, 2007 articles concerning the alleged bribery of a Lady Justice. His bases for the amount of money, the number of boxes, the date of delivery of the boxes, among other important details, were, by his own admission founded on personal assumptions. This nonchalant attitude extended to his very testimony before the investigating committee.

6. **ID.; ID.; ID.; ID.; RESPONDENT'S AIM WAS TO GO ON A FISHING EXPEDITION TO SEE IF SOMEONE WOULD CONFIRM OR DENY HIS BASELESS ACCUSATION.—** Respondent thus admits to having written his articles as means to "fish out" the Lady Justice involved in an alleged bribery fed to him by his source, with reckless disregard of whether or not such bribery indeed took place. It defies reason why any responsible journalist would go on to publish any material in a newspaper of general circulation without having ascertained even the five W's and one H of the story. That he could not, through his extensive network of informants, confirm the approximate date when the alleged bribery took place, the identities of the persons involved, or any other important detail, before he began his series of articles only leads to the rational conclusion that he did not care whether or not the story he published was true. His aim, as he admits, was to go on a fishing expedition to see if someone would confirm or deny his now clearly baseless accusations. This practice of "fishing" for information by publishing unverified information in a manner that leads the reading public to believe such is true cannot be tolerated.

7. **ID.; ID.; ID.; ID.; AGGRAVATING RESPONDENT'S AFFRONT TO THE DIGNITY OF THE COURT IS HIS UNWILLINGNESS TO SHOW ANY REMORSE OR REPENTANCE FOR HIS CONTEMPTUOUS ACTS.—**

Aggravating respondent's affront to the dignity of the Court is his unwillingness to show any remorse or repentance for his contemptuous acts. In fact, as he made clear in his testimony before the Investigating Committee when asked what his thoughts were about his having published the instant articles, he replied that he was "happy in the sense that [he] did a job in [his] best lights and the effort ended up in the creation of [the investigating panel]." However, such assertions of having acted in the best interest of the Judiciary are belied by the fact that he could have caused the creation of an investigating panel to look into such allegations in a more rational and prudent manner. In the words of the Investigating Committee — If he had no malice toward the Court, if, as he professes, the purpose of his columns was to save the integrity and honor of the Court, Macasaet should, and could, have reported the rumored bribery directly to the Chief Justice and asked for its investigation. He should have refrained from calling the Court names, before giving it a chance to act on his report and on his suggestion to investigate the matter. Since he knew the name of the Court employee who allegedly discovered the bribe money, the Court could have begun its investigation with her to ascertain the identity of the nameless Lady Justice and the veracity of the rumored bribery. His disparaging remarks about the Court and jurists in conjunction with his unverified report on the alleged bribery were totally uncalled for and unjustified. It is precisely because of his failure to abide by the tenets of responsible journalism that we accept the findings of the Investigating Committee in holding respondent Macasaet guilty of indirect contempt of court. He must be made accountable for his complete failure to exercise even a single vestige of responsible journalism in publishing his unfounded and ill-thought diatribes against the Judiciary and the honorable people who serve it.

8. ID.; ID.; ID.; ID.; NO VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS.— Respondent claims that there is a violation of his right to due process. From the time his articles were published, no formal charge has been filed against him as required under Section 3, Rule 71 of the 1997 Rules of Civil Procedure. Respondent fails to see, however, that under Section 4 of the same Rule, proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed, by an order or any other formal charge

requiring respondent to show why he should not be punished for contempt. Our Resolution dated September 25, 2007 satisfies the Rule. He cannot validly claim that such resolution is vague. He cannot feign ignorance of the contents of his September 18, 19, 20, and 21, 2007 articles in the **Malaya**.

9. **ID.; ID.; ID.; ID.; PROCEEDINGS OF THE COMMITTEE ARE PRESUMED TO BE REGULAR AND THE *ONUS PROBANDI* OF PROVING OTHERWISE RESTS ON RESPONDENT, AND NOT ON THE COMMITTEE.—** The proceedings of the Committee are presumed to be regular. Thus, the *onus probandi* to prove otherwise rests on Macasaet, not on the Committee. Suffice it to say that the Dissenting Opinion which cites *People v. Godoy* as to the "criminal" character of a contempt proceeding, fails to state what *Godoy* likewise instructs — Strictly speaking however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis,* partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

10. **ID.; ID.; ID.; ID.; RESPONDENT NEVER ASSERTED HIS RIGHT TO CROSS-EXAMINE THE WITNESSES AGAINST HIM DESPITE THE OPPORTUNITY TO DO SO.—** Assuming *arguendo* that Macasaet was not able to cross-examine his witnesses, this does not necessarily mean that his right to due process of law was violated. The right of an accused to cross-examine the witnesses against him, although an adjunct of the Constitutional right "to meet the witnesses face to face," **can be waived when not timely asserted**. In the case of Macasaet, never did he assert his right to cross-examine the

witnesses against him despite the opportunity to do so. During the entire course of the proceedings in the Committee, respondent was vigorously represented by counsel *de parte*. Respondent or his counsel could have moved to cross-examine the adverse witnesses. Respondent had every opportunity to do so. Lamentably, he failed to exercise the said right. Interestingly, during the last hearing date, counsel for respondent requested that respondent be allowed to say something, which the Committee granted. Respondent then proceeded with a lengthy discourse, all of 45 pages, on everything and anything, except his right to cross-examination. Verily, it cannot be validly claimed now that his right to cross-examine was violated. The Court is bereft of any power to invoke the right to cross-examine the witnesses against respondent, for and in his behalf. Otherwise, the Court will be acting as his counsel, which is absurd.

11. **ID.; ID.; ID.; ID.; BY SPREADING UNSUBSTANTIATED ALLEGATIONS ABOUT CORRUPTION AND OTHER FORMS OF JUDICIAL MISCONDUCT, THE PRESS DRAMATICALLY UNDERMINES THE PUBLIC FAITH IN THE COURTS AND THREATENS THE VERY FOUNDATION OF OUR DEMOCRATIC GOVERNMENT.—** A free press is regarded as a key pillar of democracy. Reporters must be free to report, expose, and hold government officials and agencies — including an independent judiciary — accountable. Press attention surrounding the judiciary ensures public accountability. Such publicity acts as a check on judicial competence and integrity, exposes inefficiencies and irregularities, keeps vigil over various public interest cases, and puts pressure on responsible judicial officials. This freedom has been used and has benefited the cause of justice. The press has become an important actor — a judicial watchdog — in the ongoing judicial transformation. When properly validated, its acts are protected speech from an accepted function. Freedom, however, has not guaranteed quality journalism. The press has been vulnerable to a host of legitimate criticisms such as incompetence, commercialism, and even corruption. By disproportionately informing the public about specific court processes, or by spreading unsubstantiated allegations about corruption and other forms of judicial misconduct, the press dramatically undermines the public's faith in the courts and threatens the very foundation of our democratic government.

12. **ID.; ID.; ID.; ID.; THE COURT'S POWER OF CONTEMPT IS NECESSARY IN CASES WHERE THE CRITICISM IS OBVIOUSLY MALICIOUS OR IN VIOLATION OF THE *SUB JUDICE* RULE OR WHERE THERE IS EVIDENT ATTEMPT TO INFLUENCE THE OUTCOME OF A CASE AND TO THOSE WHO OBSTRUCT OR IMPEDE JUDICIAL PROCESSES.—** Oftentimes, journalists writing about the judiciary and court cases lack basic knowledge of the law and judicial procedures, on the basis of which they draw faulty conclusions which they pass on to their readers as gospel truths. Trial by publicity also influences the independence of judges as the public is fed with partial information and vocal opinions, and judges are pressured to decide in accordance with the public opinion. Faith in the judiciary is undermined when judges rule against the expectations of the public which has been brainwashed by dramatic reports and graphic comments. In some cases, unchecked rumors or allegations of irregularities are immediately published because journalists lack professional competence to verify the information, or are simply eager to break the news and attract a wider readership. The role of the press in relation to the judiciary needs to be regulated. This can be done through voluntary codes of conduct on the part of the press and through judicial policies, such as the rule on *sub judice* and contempt of court rulings. The absence of clear voluntary codes developed by the press, as its self-regulator, strengthens the need for the Court to use its power in the meantime to cite critics for contempt. This is necessary in cases where such criticism is obviously malicious or in violation of the *sub judice* rule, or where there is an evident attempt to influence the outcome of a case. Judges have the duty to defend and uphold the integrity and independence of the judiciary. They should sanction those who obstruct or impede the judicial processes. The effective administration of justice may only be realized with the strong faith and confidence of the public in the competence and integrity of the judiciary, free from political and popular pressure.

13. **ID.; ID.; ID.; ID.; A CRITICISM SHOULD BE *BONA FIDE* AND SHALL NOT SPILL OVER THE WALLS OF DECENCY AND PROPRIETY.—** Criticism at every level of government is certainly welcome. After all, it is an essential part of the checks and balances in our republican system of

government. However, criticisms should not impede or obstruct an integral component of our republican institutions from discharging its constitutionally-mandated duties. As the Court said in *In Re: Almacen*: Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizen whom it is expected to serve. xxx xxx xxx But it is the cardinal condition of all such criticism that it shall be *bona fide,* and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. x x x All told, illegitimate and uninformed criticisms against the courts and judges, those which cross the line and attempt to subvert the judicial process, must be avoided. They do a great disservice to the Constitution. They seriously mislead the public as to the proper functioning of the judiciary. While all citizens have a right to scrutinize and criticize the judiciary, they have an ethical and societal obligation not to cross that too important line.

14. **ID.; ID.; ID.; ID.; PENALTY OF FINE IN THE AMOUNT OF ₱20,000.00 IS REASONABLE CONSIDERING THE GRAVITY OF RESPONDENT'S IMPROPER CONDUCT COUPLED WITH THE RECALCITRANT MANNER IN WHICH HE RESPONDED WHEN CONFRONTED WITH THE REALITY OF HIS WRONGDOING.—** Each of us has important responsibilities in a constitutional democracy. We, judges, will continue to discharge our judicial functions with fairness. We urge all and sundry to abide by theirs. We need to respect each other. As the golden rule goes — let us not do to others what we do not want others to do to us. ***Igalang natin ang isa't-isa. Huwag nating gawin sa iba ang ayaw nating gawin nila sa atin.*** Given the gravity of respondent Macasaet's improper conduct, coupled with the recalcitrant manner in which he responded when confronted with the reality of his wrongdoing, a penalty of fine in the amount of ₱20,000.00 would be right and reasonable.

CARPIO, *J.*, *dissenting opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; INHERENT POWER**

TO PUNISH FOR CONTEMPT; THE COMMITTEE PROCEEDINGS WERE FATALLY DEFECTIVE FOR PATENT DENIAL OF DUE PROCESS RENDERING THE TESTIMONIES IN QUESTION INADMISSIBLE.— The Resolution dated 16 October 2007 created the Committee to: [R]eceive x x x evidence from all the parties concerned [and] x x x, on its own, call such persons who can shed light on the matter. It shall be endowed with all the powers necessary to discharge its duty. The Committee read this Resolution as having granted it mere "fact-finding" powers. **Accordingly, when the witnesses the Committee summoned testified, the Committee monopolized the right to propound questions to the witnesses, denying to Macasaet such right.** This procedure is **fatally defective for patent denial of due process**, rendering the testimonies in question inadmissible. A proceeding for criminal contempt, as here, is adversarial. At the heart of such adversarial process is the parties' right to test the veracity of the testimonies of adverse witnesses through cross-examination. With the procedure the Committee adopted, Macasaet was reduced to a passive participant, unable to subject the testimonies of adverse witnesses to rigorous probing under cross-examination. As matters stand, Macasaet will be subjected to punitive sanctions based on evidence he had no opportunity to scrutinize. True, the Committee solicited the views of the parties, and the counsels for the *Newsbreak* staff and Delis agreed with the Committee's characterization of the proceedings as mere fact-finding. However, this acquiescence is no more binding on the Court than the Committee's view. It is an erroneous conclusion of law which cannot transform the nature of a contempt proceeding from adversarial to non-adversarial. Nor can it be said, as the *ponencia* holds, that Macasaet waived his right to conduct cross-examination for his failure to "timely assert" such right. This conclusion erroneously presupposes that Macasaet should have asserted such right at that point. The Committee stated at the outset that its investigation was merely "fact-finding," making Macasaet believe that there would be another occasion for a cross-examination of the witnesses. Thus, Macasaet did not insist on his right to cross-examine at that point. Having been denied the right to cross-examine from the start, there was nothing which Macasaet could have "timely asserted."

2. ID.; ID.; ID.; ID.; THE EVIDENCE AT HAND FAILS TO MEET THE APPLICABLE STANDARD IN CONTEMPT-BY-PUBLICATION PROCEEDINGS; TWO PARAMETERS USED BY THE COURT IN *IN RE: EMIL JURADO* (JURADO TEST) IS WANTING ON BOTH COUNTS.— The evidence at hand fails to meet the applicable standard in contempt-by-publication proceedings. This matter comes on the heels of a small but growing line of jurisprudence on contempt-by-publication; however, this is only the second incident to involve this Court on reports of corruption. These cases implicate two competing but equally vital State interests: on the one hand, the right of journalists to be protected from contempt of court under the constitutional guarantees of free speech and of the press and, on the other hand, the right of the courts to maintain order, impartiality and dignity in the administration of justice. In resolving the matter, we are called upon to perform a task more commonly done in constitutional adjudication — the balancing of constitutional values using applicable standards. As ever, the result of this delicate task hinges on the liberality or stringency of the test used against which the two interests are weighed. In concluding that "there exist valid grounds x x x to cite x x x Macasaet for indirect contempt x x x," the Report implicitly used two parameters, first applied in *In Re: Emil P. Jurado* (*Jurado* test), against which Macasaet's publications were measured: (1) whether Macasaet's story was false and (2) whether Macasaet could have prevented the publication of the false story by exercising diligence in verifying its veracity. As stated, the Report found Macasaet's publications wanting on both counts.

3. ID.; ID.; ID.; ID.; A SIMPLE RESORT TO RESPONDENT'S PUBLICATIONS WILL BELIE THE QUESTION OF DISRESPECT FOR THE COURT.— Although the majority, in adopting the Report's findings, did not expressly so state, it appears that the substantive evil allegedly brought about by Macasaet's publications is two-fold: (1) disrespect for the Court and (2) unfair administration of justice. To determine to what extent the substantive evil is likely to occur, we must turn to the particular utterances and the circumstances of their publication. On the question of disrespect for the Court, the Report seemed to have cherry-picked words from Macasaet's publications describing the Court's reputation ("sagging" and

"soiled"), the state of the courts ("dirty"), and the public's appraisal of judges ("thieves") and separated them from their context to arrive at its conclusion. Adopting the same approach, the majority holds that "[Macasaet] has absolutely no basis to call the Supreme Court a court of 'thieves' and a 'basket of rotten apples.'" A simple resort to the publications in question belies these findings. Macasaet used these terms to bring home his point that (1) the alleged bribery "proves" the less than a desirable state of affairs in the judiciary (that is, the courts are "dirty"); (2) which reflects on the entire judiciary (similar to a basket of apples where, if "there are a few which are rotten[;] [t]hat makes the whole basket rotten"); and (3) that the Court must investigate the reported bribery with Delis' aid to save the other members of the Court from "suspicions they are thieves." Thus, taken in context of their actual use as they appeared in Macasaet's publications, the words the majority finds contumacious are no more disrespectful of courts than when a publication states that a reported pay-off "proves" that the judiciary is populated by "hoodlums in robes." On Macasaet's statement that the Justice in question "shamed her court" and that she should resign or be impeached, it needs no further elaboration that this statement is not directed at the Court but at one of its members. Without passing judgment on the nature of this statement, it is obvious that the remedy for any injury this may have caused lies not in this Court's exercise of its contempt power but in the resort by the Justice concerned to remedies available under our civil and criminal statutes to vindicate her rights.

4. **ID.; ID.; ID.; ID.; QUESTION OF UNFAIR ADMINISTRATION OF JUSTICE; NEITHER HAS IT BEEN CLAIMED NOR SUGGESTED THAT THE MATTER WILL ADVERSELY AFFECT THE DISPOSITION OF THE PENDING INCIDENT IN G.R. NO. 172602; FACTS OF THE CASE FALLS SHORT OF THE STRINGENT STANDARD UNDER THE "CLEAR AND PRESENT DANGER TEST" THAT THE SUBSTANTIVE EVIL BROUGHT ABOUT BY THE PUBLICATIONS BE EXTREMELY SERIOUS AND THE DEGREE OF IMMINENCE EXTREMELY HIGH.—** On the question of unfair administration of justice, neither has it been claimed nor suggested that this matter has or will adversely affect the disposition of the pending incident in G.R. No.

172602. If there is any party which stands to be directly prejudiced by the alleged bribery, it is the government whose case against Go was ordered dismissed in the Resolution of 3 September 2007. However, the government has not asked for Justice Santiago's inhibition from that case, indicating its continuing trust and confidence in her impartiality. With this backdrop, the Report's conclusion that Macasaet's publications "generate[d] public distrust in the administration of justice" and wrought "damage and injury" to the "institutional integrity, dignity, and honor" of this Court rings hollow, rooted on assumptions bereft of factual basis. As well observed by then Associate Justice, now Chief Justice Reynato S. Puno, in *Jurado* which also involved a journalist who authored false reports of corruption in the Court: There is nothing in the record, however, showing the degree how respondent's false report degraded the administration of justice. The evidence from which this conclusion can be deduced is nil. The standing of respondent as a journalist is not shown. The extent of readership of respondent is not known. His credibility has not been proved. Indeed, nothing in the record shows that any person lost faith in our system of justice because of his said report. **Even the losing party** x x x **does not appear to have given any credence to the said false report.** These observations are consistent with the rule that the clear and present danger test is deemed met only upon showing that "the material would tend to cause the unfair disposition of pending cases" or create an imminent and serious threat to the ability of the Court to decide the issues before it. In sum, the facts of this case fall short of the stringent standard under the clear and present danger test that the substantive evil brought about by the publications be **extremely serious** and the degree of imminence **extremely high**.

5. ID.; ID.; ID.; ID.; THE CLEAR AND PRESENT DANGER TEST IS THE MOST EXACTING AND PROTECTIVE TEST IN FAVOR OF FREE PRESS; BEFORE A JOURNALIST CAN BE PUNISHED IN A CRIMINAL CONTEMPT, THERE MUST BE PROOF BEYOND REASONABLE DOUBT THAT HIS PUBLICATION TENDS TO OBSTRUCT THE ADMINISTRATION OF JUSTICE, AND SUCH OBSTRUCTION MUST BE EXTREMELY SERIOUS LIKELY RESULTING IN AN UNFAIR DECISION AND THE

DEGREE OF IMMINENCE OF THE OBSTRUCTION ACTUALLY HAPPENING EXTREMELY HIGH.— The clear and present danger test, which this Court has been applying in contempt cases, is most protective of free speech and of free press, basic rights which are necessary for the exercise of almost every other fundamental right. That this case is **a criminal contempt proceeding** gives added protection to Macasaet who invokes freedom of the press. Indeed, Macasaet is afforded the basic rights granted to the accused in a criminal case and as precondition for citing him in contempt, **intent to commit contempt of court must be shown by proof beyond reasonable doubt**. Good faith or absence of intent to harm the courts is a valid defense. Macasaet did invoke good faith but the Report brushed it aside as "tongue in cheek protestation[]." The clear and present danger test is the most exacting and protective test in favor of free press. Before a journalist can be punished in a **criminal** contempt case, as in this case, there must be proof beyond reasonable doubt that his publication tends to obstruct the administration of justice, and **such obstruction must be extremely serious, likely resulting in an unfair decision, and the degree of imminence of the obstruction actually happening extremely high**.

6. **ID.; ID.; ID.; ID.; THE SUBJECT ARTICLES WAS A PROFESSIONAL CALL ON THE PART OF RESPONDENT AND THE PUBLICATION AS JOURNALISTS AND "AGENTS OF THE PEOPLE" TO RUN THE STORY; FAILURE TO SUBSTANTIATE A STORY, OR EVEN THE MERE FALSITY OF PUBLICATIONS, HAD LONG CEASED TO SUFFICE TO HOLD JOURNALIST IN CONTEMPT OF COURT, JUST AS IT HAD LONG CEASED TO SUFFICE TO HOLD JOURNALISTS LIABLE FOR LIBEL FOR CRITICISM OF PUBLIC OFFICIALS UNDER THE ACTUAL MALICE STANDARD.—** Macasaet and *Newsbreak* based their reports on the alleged bribery from information obtained from their respective confidential sources. In short, it was a professional call on the part of Macasaet and *Newsbreak* to run the story. This Court should be the last to attribute negative motives for this judgment call. Admittedly, Macasaet has failed to substantiate his story — spread over four issues of *Malaya*, divulging bits and pieces of vague information. This, however, does not serve to lessen the

protection afforded to the publications which carried them under the constitutional guarantees of free speech and of free press. Journalists, "agents of the people" who play a vital role in our polity by bringing to the public fora issues of common concern such as corruption, must be accorded the same "breathing space" for erroneous statements necessary for free expression to thrive in a democratic society. Further, failure to substantiate a story, or even the mere falsity of publications, had long ceased to suffice to hold journalists in contempt of court (unless there is a clear and present danger that such false reports will impair the administration of justice) just as it had long ceased to suffice to hold journalists liable for libel for criticism of public officials under the actual malice standard.

7. **ID.; ID.; ID.; ID.; THE "FALSITY AND NEGLIGENCE TEST" RELIED UPON BY THE MAJORITY IS A SHARP DAGGER AIMED AT THE HEART OF FREE SPEECH AND OF FREE PRESS.—** To support its conclusion finding Macasaet guilty of contempt of this Court, the majority made a selective survey of contempt of court jurisprudence and sought to apply them here. However, of the cases the majority cites, only three involved contempt by publication proceedings, two of which, *In re Kelly* and *In re Sotto* were decided long before we laid down the parameters of the clear and present danger test in *Cabansag*. As for the third case of *People v. Godoy*, the Court in fact applied the clear and present danger test in that case, thus: Snide remarks or sarcastic innuendoes do not necessarily assume that level of contumely which is actionable under Rule 71 of the Rules of Court. Neither do we believe that the publication in question was intended to influence this Court for it could not conceivably be capable of doing so. The article has not transcended the legal limits for editorial comment and criticism. Besides, **it has not been shown that there exists a substantive evil which is extremely serious and that the degree of its imminence is so exceptionally high as to warrant punishment for contempt and sufficient to disregard the constitutional guaranties of free speech and press**. Thus, while ostensibly using relevant jurisprudence to arrive at its conclusion, the majority actually relied on the liberal parameters of the "falsity and negligence test" used in *Jurado.* The "falsity and negligence test" is a sharp dagger aimed at the heart of free speech and of free press.

8. **ID.; ID.; ID.; ID.; THE "FALSITY AND NEGLIGENCE TEST" DOES NOT CONSIDER THE SERIOUSNESS OR IMMINENCE OF THE SUBSTANTIVE EVIL SOUGHT TO BE PROTECTED; THE TEST IS A DANGEROUS THROWBACK TO THE DARK AGES IN THE HISTORY OF FREE SPEECH AND OF FREE PRESS.—** Applied for the first time in *Jurado* and nowhere else on this planet, this test does not consider the seriousness or imminence of the substantive evil sought to be prevented. Any kind of unflattering publication to a judge or court, whether or not putting at risk a fair trial or decision, becomes punishable for contempt if false and the journalist could have prevented the publication by exercising diligence to verify its veracity. Good faith is not a defense. The "falsity and negligence test" compels the journalist to guarantee the veracity of what he writes on pain of criminal contempt of court. Obviously, this has a chilling effect on free speech and free press. This will lead to self-censorship, suppressing the publication of not only what is false but also of what is true. Critics of judges or the courts will be forced into silence, unless they are willing to face imprisonment or fine for criminal contempt. The "falsity and negligence test" is a dangerous throwback to the Dark Ages in the history of free speech and of free press. By approving the Report's reliance on the *Jurado* test, the majority perpetuates a double-standard *vis-a-vis* publications critical of public officials. On the one hand, the majority applies the liberal "falsity and negligence test" in lieu of the exacting clear and present danger test to scrutinize publications critical of judges in contempt cases, and on the other hand, applies the stringent "actual malice test" for publications critical of all other public officials.

9. **ID.; ID.; ID.; ID.; AS THE HIGHEST COURT OF THE LAND, THE COURT SHOULD BE THE FIRST TO RESIST THE TEMPTATION TO PRIVILEGE ITS MEMBERS WITH E SHIELD OF *LESE-MAJESTE*, THROUGH THE LIBERAL "FALSITY AND NEGLIGENCE TEST" AT THE EXPENSE OF DILUTING THE ESSENCE OF THE FREE PRESS GUARANTEE INDISPENSABLE IN A DEMOCRATIC SOCIETY.—** This Court has extended the constitutional protection of free speech to publications critical of a *barangay* official, provincial governor (and concurrently a cabinet official),

and other public figures, for lack of proof of knowledge that the publication was false or of reckless disregard of whether the publication was false or not. However, the Court today is imposing punitive sanctions on a journalist for authoring publications imputing malfeasance on a member of the Court because the journalist failed to substantiate his story, despite incontrovertible proof that he acted in good faith as shown by the parallel publication of the same story by another media outlet based on its own confidential sources (which, significantly, was never made to justify its conduct). Supreme Court Justices, as public officials, and the Supreme Court, as an institution, are entitled to no greater immunity from criticism than other public officials and institutions. Indeed, the dual-treatment that the majority tolerates turns on its head the purpose of the contempt power: instead of "protect[ing] immediate litigants and the public from the mischievous danger of an unfree or coerced tribunal" it "protects the court as a mystical entity or the judges x x x as anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed." As the Highest Court of the land, the Court should be the first to resist the temptation to privilege its members with the shield of *lese-majeste*, through the liberal "falsity and negligence test," at the expense of diluting the essence of the free press guarantee indispensable in a democratic society. This Court diminishes itself if it diminishes the free press guarantee, for an independent judiciary needs a free press as much as a free press needs an independent judiciary.

10. ID.; ID.; ID.; ID.; WHILE COURTS MUST, AS A MATTER OF SELF-PRESERVATION BE ABLE TO DEFEND THEMSELVES, IT IS NOT AGAINST ALL ATTACKS THAT THEY CAN EMPLOY THE PRESERVATIVE POWER OF CONTEMPT.— Courts must, as a matter of self-preservation, be able to defend themselves. But it is not against **all** attacks that they can employ the preservative power of contempt. As this Court recognized more than half a century ago in *Cabansag*, it is only when the evil brought about by the attack is "extremely serious and the degree of imminence extremely high" so as to impede, obstruct, or degrade the administration of justice that courts must act. To apply this exacting test is not to deny a right inherent in courts but to recognize their

place in a free society always accountable to the public whom they serve and for whom they exist. More than a decade ago, this Court was given the chance in *Jurado*, as the Court is again now, of applying to itself this rigorous test to an unsubstantiated publication imputing corruption to a member of this Court. The eloquent words of Chief Justice Puno explaining why a step towards such a direction serves the cause of press freedom and good government remain true today as they did then: [I]t is not every falsehood that should incur the Court's ire, lest it runs out of righteous indignation. **Indeed, gross falsehoods, vicious lies, and prevarications of paid hacks cannot deceive the public any more than can they cause this Court to crumble. If we adopt the dangerous rule that we should curtail speech to stop every falsehood we might as well abolish freedom of speech for there is yet to come a man whose tongue tells only the truth.** In any event, we should take comfort in the thought that falsehoods cannot destroy — only truth does but only to set us free.

APPEARANCES OF COUNSEL

Rogelio N. Velarde for A. Macasaet.
Ricardo T. Pamintuan for D.C. Munoz Delis.

D E C I S I O N

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

FREEDOM of the press and judicial independence (***kalayaan ng pamamahayag at kalayaang panghukuman***) — two constitutional values which unfortunately clash in this case for indirect contempt of court — have to be weighed and balanced against each other.

The Antecedents

The case stemmed from certain articles that appeared in the "Business Circuit" column of Amado P. Macasaet in the Malaya, a newspaper of general circulation of which he is the publisher. The articles, containing statements and innuendoes about an alleged bribery incident in the Supreme Court, came out in four

(4) issues of the newspaper on September 18, 19, 20 and 21, 2007, reproduced as follows:

September 18, 2007 —

Bribery in the Court

A lady justice (I have not been told whether she is from the Supreme Court or the Court of Appeals) did not report for a day last week.

Her secretary received a gift-wrapped box about the size of two dozen milk cans.

Believing that the "gift" might be something perishable, she opened the box. Indeed, it was a gift – estimated at ₱10 million. Posthaste, the secretary informed the magistrate about the gift. She thought she was doing her job. The lady justice fired her instead.

She would not have anybody catch her accepting a bribe. But she practically did.

The stupidity here is that the bribe-giver – what else would we call him or her — did not check whether the lady justice was in the office or not. Better still he or she could have the box full of money delivered to her home. But then her family would get to know about and ask who was the kind soul that was so liberal with money — a boxful of it.

The Supreme Court cannot let this pass. A full investigation should be conducted. The magistrate who was sent the bribe should be impeached.

The gift gives proof to the pernicious rumor that the courts are dirty. This time, the lady justice is with a higher court.

The court is like a basket of apples. There a few which are rotten that makes the whole basket rotten.

The names and reputation of highly-respected jurists must be saved from suspicions they are thieves.

Here's the clue

The Court employee who was fired by the lady jurist is a niece of another lady justice who earlier retired. The worker was inherited by the incumbent lady justice.

My problem with this report is that while my source is definite about the employee opening a gift-wrapped box that contained at least ₱10 million, he won't confide to me the identity of the jurist.

Unless the employee who was fired talks against her boss — and she should as a matter of duty — we will never know who this justice really is. The members of the Supreme Court, the Court of Appeals, the Sandiganbayan are all called justices.

The head of the Office of Government Corporate Counsel is also honored by being addressed as such. So is the head of the Court of Tax Appeals.

Since the employee was fired for opening the box which she thought contained perishable goods but turned out there was an estimated ₱10 million in it, she should be loyal to her duty of telling the truth.

That way, she would have rendered a great service to the justice system. Without her talking, every lady with the title of Justice is suspect. There are more than a dozen of them in different courts but only one was caught red-handed taking a bribe. Her name should be known so that the Supreme Court can act swiftly on a clear case of bribery.

Otherwise, this case becomes one where the pot calls the kettle black. Or is that the reason the employee would not talk, that her former boss could spill the beans on her peers?

September 19, 2007 —

The Bribe Giver

I learned from some lawyers that the bribe money given to a lady justice came from a Chinese-Filipino businessman who has been criminally charged.

It is funny that the delivery of five boxes of money (I said only one earlier) coincided on the day the lady justice, obviously acting as *ponente*, acquitted the prospect.

The secretary of the lady justice who took the bribe made five trips to the guardhouse to pick up the boxes.

Incidentally, this secretary is a namesake of her aunt, a deceased associate justice of the Supreme Court.

I dare say that if her name is Cecilia, it is entirely possible that the lady justice is a member of the Supreme Court. The late justice Cecilia Muñoz-Palma is the only lady justice I know who retired and died at a ripe old age and left behind a reputation of decency and integrity.

We are coming closer and closer to the truth. The lady justice shamed her court. She should resign or be impeached.

That is the only way the soiled reputation of the Highest Court could be restored.

September 20, 2007 —

Cecilia, please save the court

I have established the lady justice's secretary who opened one of the five milk boxes containing bribe money is a niece of the late, respected and honorable Associate Justice Cecilia Muñoz Palma from Batangas.

The secretary is a niece of the late justice and a namesake.

Cecilia, you have a duty to honor the memory of your aunt, who, during her stay in the court, was known for having balls.

More important than that, you have a duty to save the sagging reputation of the Supreme Court.

Cecilia, you must tell the Court *en banc* everything you know about the money that was sent in five boxes to your boss.

Not in retaliation for your dismissal, but for no other reason than as a duty to your country and, I must again say, to honor the memory of your late illustrious aunt, a legal luminary and staunch defender of the Constitution.

The other reason you must spill the beans is that if you do not, other lady justices are suspects. That is not fair to them.

September 21, 2007 —

Wrong date, same facts

On verification, I discovered that the secretary of a lady justice of the Supreme Court who was said to have accepted five milk boxes of money, was fired as early as March. Not last week as I mistakenly reported.

It turns out that Cecilia Muñoz-Delis from Bicol picked up the last five boxes several times in March.

She never opened the first four boxes which she picked up from the guardhouse of the Court.

She opened the last and saw the money because the lady justice was absent on that day. Forthwith, she was fired. Cecilia, who is from Bicol, never opened any of the first four boxes delivered on various dates (I have not been told when). She picked up all of them from the Supreme Court guardhouse and left them with the lady justice. She wouldn't dare open the first four because the lady justice was in her office. She opened the fifth one because the lady justice did not report for work on that day.

Cecilia thought that the gift-wrapped box contained some perishables like food. What she found was money instead. She was fired.

Whenever a gift for lady justice comes, she would order Cecilia to pick it up from the guardhouse. So the fifth she picked up was one of those errands.

Where is Cecilia?

I cannot get any information on the present whereabouts of Cecilia. However, if the Supreme Court has intentions to investigate what I have been saying, maybe the Chief Justice himself should find out where she could be sent an invitation to appear before an investigation group in the Court.

Better still, as I said, yesterday, Cecilia should disclose everything she knows regarding the box before the Court *en banc*.

Farthest thing from my mind is to embarrass the lady justice whose identity I do not know up to now.

It is my conviction that the Court should investigate reports of wrongdoing by any of its peers. Justice is served that way.

The Chief Justice and the rest of the justices should not have a problem finding out who she is.

It is a simple job of asking a clerk to go to personnel department of the Court and find out who Cecilia worked for.[1]

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[1] *Rollo,* pp. 2-6.

The September 18, 2007 article, the first of the series of articles, caught the attention of Assistant Court Administrator (ACA) Jose Midas P. Marquez, Chief of the Supreme Court Public Information Office, in the course of his monitoring the daily news reports and columns in major newspapers. However, since it was "vague about which 'court' was being referred to, whether the Supreme Court, the Court of Appeals, the Sandiganbayan, or the Court of Tax Appeals,"[2] ACA Marquez opted to merely note it.[3]

The succeeding two articles, however, gave an indication that the supposed bribery happened in the Supreme Court. Respondent Macasaet, in his September 19, 2007 article, wrote, among others, that "I dare say that if her name is Cecilia, it is entirely possible that the lady justice is a member of the Supreme Court x x x. We are coming closer and closer to the truth. The lady justice shamed her court. She should resign or be impeached. That is the only way the soiled reputation of the Highest Court could be restored."

Similarly, in his September 20, 2007 article, respondent said that Cecilia had "a duty to save the sagging reputation of the Supreme Court."

Also on September 20, 2007, at around 6:00 p.m., Marites Dañguilan-Vitug, Editor in Chief of *Newsbreak*, faxed a letter to Supreme Court Associate Justice Consuelo Ynares-Santiago asking for three things —

1. In (*sic*) April 13, 2007, you concurred with a decision penned by Justice Romeo Callejo, Sr. ruling that the Sandiganbayan Fifth Division did not commit a grave abuse of discretion by finding probable cause against Henry Go. However, five months later (September 3, 2007), acting on Go's motion for reconsideration, you reversed yourself and ordered the dismissal of the graft case against Go. Please explain the circumstances that led to this reversal.

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[2] *Id.* at 138; affidavit of ACA Jose Midas P. Marquez, par. 4, p. 1.

[3] *Id.*

2. We have gathered from three sources that you received a cash gift of ₱10 million after you issued the decision early September. Please comment.

3. We're checking if this is accurate. Your secretary, who opened the gift-wrapped box thinking that it contained perishable items, found cash instead. It was after this incident that you removed her.[4]

Upon receipt of the faxed letter, Mme. Justice Ynares-Santiago called for ACA Marquez, showed him the letter of Dañguilan-Vitug, and requested him to tell Dañguilan-Vitug that she (Mme. Justice Ynares-Santiago) had been consistent on her position in the *Go* case, that she never reversed herself, that she never received a cash gift, and that no secretary was terminated for opening a gift-wrapped box containing money. Accordingly, ACA Marquez went back to his office, called up Dañguilan-Vitug and told her what Mme. Justice Ynares-Santiago told him.[5]

That same evening, at around seven, Dañguilan-Vitug faxed "the corrected version of the earlier letter" —

1. On April 13, 2007, you dissented against the decision penned by Justice Romeo Callejo, Sr. ruling that the Sandiganbayan Fifth Division did not commit a grave abuse of discretion by finding probable cause against Henry Go. The vote was 3-2 in favor of Calleja's (*sic*) decision. Five months later (September 3, 2007), acting on Go's motion for reconsideration (by that time, Callejo had already retired), you ordered the dismissal of the graft case against Go. I understand the exchanges were bitter and the deliberations long. Please explain the contentious issues.

2. We have gathered from three sources that you received a cash gift of ₱10 million in March 2007 in the midst of deliberations on the case. Please comment.

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[4] *Id.* at 146; faxed letter of Marites Dañguilan-Vitug to Mme. Justice Consuelo Ynares-Santiago dated September 20, 2007.

[5] *Id.* at 139-140; affidavit of ACA Marquez, pars. 7-9, pp. 2-3.

3. We're checking if this is accurate. Your secretary, who opened the gift-wrapped box thinking that it contained perishable items, found cash instead. It was after this incident that you removed her in March 2007.[6]

The following day, September 21, 2007, respondent Macasaet, in his column, named the supposed secretary who was "forthwith x x x fired" allegedly after opening the box of money: "It turns out that Cecilia Muñoz Delis from Bicol picked up the last five boxes several times in March."

From the foregoing series of articles, respondent Macasaet has **painted a clear picture**: a Chinese-Filipino businessman who was acquitted of a crime supposedly left ₱10 million in five different boxes with the security guard at the Supreme Court guardhouse, which was picked up by Cecilia Muñoz Delis who was forthwith fired for opening one of the boxes.

Upon the request of Mme. Justice Ynares-Santiago, the Chief Justice instructed ACA Marquez to have the 18th, 19th, 20th, and 21st September 2007 Business Circuit columns of respondent Macasaet included in the September 25, 2007 agenda of the Court *En Banc*,[7] which case was docketed as A.M. No. 07-09-13-SC. (*Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in* ***Malaya*** *dated September 18, 19, 20, and 21, 2007*).

On September 24, 2007, Daisy Cecilia Muñoz Delis, accompanied by the Clerk of Court *En Banc*, Hon. Ma. Luisa D. Villarama, went to see Mme. Justice Ynares-Santiago and gave the latter copies of her letter to respondent Macasaet and her affidavit. Delis, in her letter to respondent Macasaet, described his articles as "baseless reports." "In other words," she wrote respondent Macasaet, "the scenario you painted and continue to paint is improbable and could only have emanated from a polluted source, who, unfortunately, chose me to be a part of

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[6] *Id.* at 147; corrected faxed letter of Marites Danguilan-Vitug to Mme. Justice Consuelo Ynares-Santiago dated September 20, 2007.

[7] *Id.* at 141; affidavit of ACA Jose Midas P. Marquez, par. 14, p. 4.

this fictional charge." She clarified that she was a Judicial Staff Officer, and not a secretary as the articles claimed she was; that she voluntarily resigned from office and was not fired; that as a matter of procedure, she would not have been tasked to receive boxes, as such was a duty assigned to their utility personnel; that it was "highly unlikely for something as blatant as [a] bribery attempt to have been done right in the doors of the Court."[8] Delis ended her letter to respondent Macasaet with a plea —

> My family and I have been suffering ever since your article came out last Tuesday, because I was being alluded to. This suffering has increased because the name of my beloved aunt x x x has been drawn into a controversy that should not have involved me or any member of my family in the first place.
>
> And so, I ask you, Sir, to please cease from mentioning my name or any of my relatives, living or deceased, in order to promote your tabloid journalism. If your source is as reliable as you believe, I suggest you practice better judgment and journalistic responsibility by verifying your data before printing anything and affecting the lives of innocent people. If this is some kind of war you are waging against the lady justice, we do not want to be collateral damage.[9]

In her affidavit, Delis stated that she "had nothing to do with, nor did x x x have any knowledge of such alleged attempted bribery,"[10] and that she executed her affidavit "to allow Justice Consuelo Ynares-Santiago to defend her honor,"[11] and "for the purpose of correcting the erroneous information of Mr. Macasaet."[12]

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[8] *Id.* at 9-10; letter of Ms. Daisy Cecilia Muñoz Delis to Mr. Amado P. Macasaet, dated September 21, 2007, pp. 1-2.

[9] *Id.* at 10-11; *id.* at 2-3.

[10] *Id.* at 7; affidavit of Ms. Daisy Cecilia Muñoz Delis dated September 24, 2007, par. 8b, p. 1.

[11] *Id.*; *id.*, par. 9, at 1.

[12] *Id.*; *id.*, par. 10, at 10.

That same morning, too, despite the prior telephone conversation between ACA Marquez and Dañguilan-Vitug, *Newsbreak* posted an on-line article written by Danguilan-Vitug herself and Aries Rufo, which was regularly updated, entitled "*Supreme Court Justice Suspected of Accepting Payoff (update)*"[13] with the picture of Mme. Justice Ynares-Santiago —

> We pieced the story of the alleged bribery from accounts of various sources within and outside the Supreme Court who have requested not to be named because of their sensitive disclosures.
>
> In March this year, Ynares-Santiago fired her staff member, Cecilia Delis, supposedly after the latter opened a gift-wrapped box delivered to their office, thinking that it contained perishable items. Delis, however, found wads of peso bills instead. The amount, two sources say, is estimated at ₱10 million.[14]

Later that morning, Mme. Justice Ynares-Santiago called ACA Marquez to her office and gave him copies of her written statement "categorically deny(ing) the accusations and insinuations, all malicious and unfounded, published in *Malaya* and in *Newsbreak*;" and underscoring "that these are blatant lies clearly aimed at smearing and maligning my character and person, and the integrity of the Judiciary which (she has) been faithfully serving for 34 years now."[15] Mme. Justice Ynares-Santiago also gave ACA Marquez copies of Delis' letter to respondent Macasaet and her affidavit, which Delis herself had brought to Mme. Justice Ynares-Santiago earlier that morning.[16]

In the afternoon of September 24, 2007, ACA Marquez held a press conference and released to the media copies of Delis' letter to respondent Macasaet, her affidavit, and the written statement of Mme. Justice Santiago.[17]

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[13] *Id.* at 101-103; *id.* at 1-3.

[14] *Id.* at 101; *id.* at 1.

[15] *Id.* at 149.

[16] *Id.* at 141; Marquez, par. 15, p. 4.

[17] *Id.* at 141; Marquez, par. 14.

On September 25, 2007, the Court *En Banc* issued a resolution stating —

> Upon evaluation of the columns "Business Circuit" of Amado P. Macasaet in the September 18, 19, 20, and 21, 2007 issues of the *Malaya*, it appears that certain statements and innuendoes therein tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.
>
> WHEREFORE, Amado P. Macasaet is ORDERED to EXPLAIN why no sanction should be imposed on him for indirect contempt of court in accordance with Section 3(d), (Rule 71) of the 1997 Rules of Civil Procedure, within five (5) days from receipt hereof. **Ynares-Santiago, *J.*, no part**.[18]

The following day, September 26, 2007, *Newsbreak* posted its on-line article entitled "*Supreme Court Orders Malaya Publisher to Explain Stories*" with a banner headline, "This is not meant to chill the media."

On October 16, 2007, the Court *En Banc* noted respondent Macasaet's **Explanation** dated October 1, 2007,[19] and directed the Clerk of Court to include in the records of the case the

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[18] *Id.* at 13; Min. Res. A.M. No. 07-09-13-SC (*Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in **Malaya** Dated September 18, 19, 20, and 21, 2007*), dated September 25, 2007.

[19] *Id.* at 14-43. In his sworn explanation, Macasaet, assisted by counsel, argued on the following points:

1. His statements were precisely a call for an investigation to preserve the integrity of the Supreme Court and the administration of justice pursuant to the Court's crusade in curbing perceived corruption in the judiciary;
2. In light of revelations not sourced from him, the subject of the statements is already demonstrably under the exclusive jurisdiction of Congress;
3. The proceedings for indirect contempt stifles freedom of the press;
4. There was no reckless disregard by the publication of the subject statements and he exerted bona fide efforts to ascertain the truth of such statements; and

affidavit of Delis dated September 24, 2007. The High Court also created an investigating committee composed of retired Supreme Court justices, namely, Justice Carolina Griño-Aquino as Chairperson; and Justices Vicente V. Mendoza and Romeo J. Callejo, Sr., as members, "to receive the evidence from all parties concerned. The Committee may, on its own, call such persons who can shed light on the matter. It shall be endowed with all the powers necessary to discharge its duty." The Committee was likewise directed "to submit its report and recommendation within thirty (30) days from the start of its hearing."[20] Retired Justices Mendoza and Callejo, however, both begged off and were eventually replaced by retired Supreme Court Justices Jose C. Vitug[21] and Justo P. Torres.[22]

The Investigation

From October 30, 2007 to March 10, 2008, the Investigating Committee held hearings and gathered affidavits and testimonies from the parties concerned.

The Committee invited respondent Macasaet, Dañguilan-Vitug, Delis, and ACA Marquez to a preliminary meeting, in which

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5. Under the circumstances, continuation of the proceedings constitutes an unconditional denial of his right to due process of law and equal protection.

On November 6, 2007, Macasaet submitted his affidavit practically reiterating his sworn explanation dated October 1, 2007. (*Id.* at 160-174.)

[20] *Id.* at 133.

[21] No known relation to Ms. Marites Dañguilan-Vitug.

[22] *Rollo,* pp. 223-229. Retired Supreme Court Associate Justice Vicente V. Mendoza resigned from the Committee upon finding out that the allegations of bribery involved an executive of PIATCO, a party to an international arbitration case in which he is an expert witness for the Philippine Government, and he did "not wish to burden the legal panel of the Philippine Government in the arbitration cases with the task of explaining or justifying his participation" in the Investigating Committee. Retired Justice Romeo J. Callejo, Sr., on the other hand, requested to be relieved, as he was the *ponente* of *Go v. Sandiganbayan* promulgated on April 13, 2007, while retired Justice Arturo Buena had likewise requested to be inhibited from the investigating committee. These requests were approved by the Court *En Banc* in a Resolution dated November 13, 2007. (*Id.* at 232.)

they were requested to submit their respective affidavits which served as their testimonies on direct examination.[23] They were then later cross-examined on various dates: respondent Macasaet on January 10, 2008, Dañguilan-Vitug on January 17, 2008, Delis on January 24, 2008, and ACA Marquez on January 28, 2008. The Chief of the Security Services and the Cashier of the High Court likewise testified on January 22 and 24, 2008, respectively.

According to the Committee —

AMADO P. MACASAET testified on January 10, 2008 but, as expected, he invoked his right under R.A. No. 53, as amended by R.A. No. 1477 to refuse to disclose the source/s of his story regarding the rumored bribery of a Lady Justice (later identified as Justice Consuelo Ynares-Santiago) of a high court (later revealed as the Supreme Court) who allegedly received Php 10 million contained in **a gift-wrapped Carnation carton box** (later changed to **five [5] gift-wrapped boxes**), for deciding a criminal case in favor of a rich Chinese-Filipino businessman. (Pls. see columns of September 18 and 19, 2007)

The pay-off was allegedly discovered when Cecilia Muñoz-Delis (not the Lady Justice's secretary but a judicial staff officer V of the PET or Presidential Electoral Tribunal) who is a niece and namesake of retired Supreme Court Justice Cecilia Muñoz Palma, allegedly opened the "**last**" box (according to his column of September 21, 2007 titled "Wrong date same facts"); but the "**first**" (according to his testimony on January 10, 2008, pp. 71, 89, 92, 125, tsn).

By his "**own conclusion**," the boxes of money were **delivered on different dates** because "I don't think a bribe giver will deliver five boxes at the same time" (87, tsn, January 10, 2008).

Macasaet testified that his "source" is not a relative of his, nor a government employee, certainly not an employee of the judiciary, and, that he (Macasaet) has known him for some 10 to 15 years (12-20, tsn, January 10, 2008).

Significantly, in his column of September 19, 2007, Macasaet revealed that he did not have only one source, but several sources,

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[23] TSN, October 30, 2007, p. 18.

i.e., "some lawyers," who told him "that the bribe money given to a lady justice came from a Chinese-Filipino businessman who has been criminally charged."

He emphatically declared on the witness chair that he trusts his source "with my heart and soul" and believes his word "as coming straight out of the Bible" (94, 113, tsn, January 10, 2008; 14, tsn, January 17, 2008). But because this source did not have direct knowledge of the bribery (26, tsn, January 10, 2008), he allegedly tried to verify from other sources the information he had received, but "**I could not get confirmation**" (29, tsn, January 10, 2008).

Notwithstanding the lack of confirmation and the paucity of details as to the identity of the Lady Justice and of the High Court where she sits, Macasaet believes that "the bribery had actually taken place" because "I trust my source with my heart and soul" (93-94, 113, tsn, January 10, 2008).

He decided to go ahead and publish the story because he "thought that eventually my effort at consistently x x x exposing the alleged bribery, one day sooner or later somebody will come up and admit or deny (it). And I think that (was) what really happened" (29, tsn, January 10, 2008).

He found out that the Lady Justice involved is Justice Consuelo Ynares-Santiago of the Supreme Court, after he received a letter dated September 21, 2007 from Cecilia Muñoz-Delis, the "Cecilia" mentioned in his columns, denying any knowledge of the alleged bribery or boxes of money for she had already **resigned (not dismissed)** from the Court on March 15, 2007, six (6) months before the alleged bribery supposedly occurred a week before Macasaet wrote about it in his column of September 18, 2007. (Annex "A", Letter dated September 21, 2007 of Cecilia Delis to Macasaet)

So, when did the bribery happen? The date was never made certain, for in his first column of September 18, 2007, Macasaet stated that the gift-wrapped box of money was delivered to the office of the Lady Justice, "a day last week" when the Lady Justice did not report for work. That must have been sometime on September 10-14, 2007 — the week before September 18, 2007.

However, the next day, September 19, 2007, he wrote in his column that the delivery of five boxes (not just one box) of money, "coincided on the day that the Lady Justice, acting as *ponente*, dismissed the criminal case against Chinese-Filipino businessman Henry T. Go in

the Sandiganbayan. That must be September 3, 2007 because the Resolution in G.R. No. 172602 "*Henry T. Go versus The Fifth Division*, *Sandiganbayan*, *et al*." was promulgated on that date. This he affirmed when he testified on January 10, 2008 (46, 74, tsn, January 10, 2008).

However, when he returned to the witness chair on January 17, 2008, after going back to his informant (on his own request) to ascertain the dates when the boxes of money were delivered to the Office of Justice Santiago, so that the Investigating Committee could subpoena the relevant logbooks of the Security Services of the Court to verify the truth of the alleged deliveries, Macasaet again changed his earlier testimonies on date/dates of the deliveries. He informed the Committee that, according to his informant, the deliveries were made "between November 2006 and March 2007"; "before Cecilia Delis resigned or was dismissed from the Court."[24]

On March 11, 2008 the Investigating Committee submitted to the Office of the Chief Justice its March 10, 2008 Report and Recommendation,[25] with the following **findings of facts** on the subject columns —

The following statements in Macasaet's columns appear to the Supreme Court to be "**innuendoes (that) tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure**."

1) From the column of Tuesday, September 18, 2007 —

> "**The gift gives proof to the pernicious rumor that the courts are dirty**. This time, the lady justice is with a higher court.
>
> **The court is like a basket of apples. There (are) a few which are rotten. That makes the whole basket rotten.**

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[24] TSN, January 17, 2008, p. 6.

[25] *Rollo,* pp. 326-347; Report and Recommendation (*Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in* ***Malaya*** *Dated September 18, 19, 20, and 21, 2007*), pp. 1-22.

The names and reputation of highly-respected jurists must be saved from **suspicion that they are thieves**.

Her name should be known so that the Supreme Court can act swiftly on a clear case of bribery. Otherwise, this case becomes one where the pot calls the kettle black. Or, is that the reason the employee would not talk, that her former boss could spill the beans on her peers?"

2) From the column of Wednesday, September 19, 2007 —

"The lady justice shamed her court. She should resign or be impeached. That is the only way the soiled reputation of the Highest Court could be restored."

3) From the column of Thursday, September 20, 2007 –

"Cecilia x x x you have a duty to **save the sagging reputation of the Supreme Court**."

Inasmuch as Macasaet's snide remarks about the courts, particularly the Highest Court, and about the justices being suspected as thieves, appear to have [been] provoked by the rumored bribery in the Court, the Investigating Committee was constrained to find out how true the accusations were and whether the columnist had exercised due care and diligence in checking out the credibility of his informant and the veracity of the derogatory information fed to him before he published it in his columns in the Malaya.[26]

Additional **observations and conclusion** were submitted, like the following —

The Committee finds that **neither Macasaet's columns in *Malaya*, nor Ms. Vitug's story in *Newsbreak***, about the pay-off of Php 10 million to Justice Consuelo Ynares-Santiago for rendering a Resolution favorable to Henry T. Go in his petition against the Sandiganbayan (according to Macasaet), or, a decision favoring Barque against Manotok in a big land case (according to Ms. Vitug), **have a leg to stand on**. As Justice Vitug has observed during the last hearing before the Committee, **everything that has been heard**

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[26] *Id.* at 333; *id.* at 8.

thus far would appear to be hearsay. Ms. Vitug admitted "there is no paper trail" to support the charge of bribery against Justice Santiago, for although her sources had pointed to Cecilia Muñoz Delis as the "root source" of the story, the information she received was "second-hand or may be third-hand" because none of her sources had talked with Delis herself (70, 72 tsn Jan. 17, 2008). Delis had refused to be interviewed by her, and had emphatically denied in her letter and affidavit any knowledge of the alleged bribery because she was no longer working in the Court when it supposedly happened.

Macasaet's sources likewise fed him double hearsay information from a source that refused to reveal the identity of the Lady Justice nor a high court but alleged that the Php 10 million bribe was discovered by her secretary named Cecilia, a niece and namesake of the late Justice Cecilia Muñoz Palma, who was fired from her job on account of it.

The Committee observed that **Macasaet's story** about the bribery and of Cecilia's role in supposedly discovering it, **is full of holes, inconsistencies, and contradictions, indicating that he did not exercise due diligence, patience, and care in checking the veracity of the information fed to him, before giving it publicity in his columns. Nor was he bothered by the damage that his columns would inflict on the reputation of a member of the Highest Court and on the Court itself**. In fact, he was "happy" that he wrote the columns (103 tsn Jan. 10, 2008). Even if he failed to get confirmation of the bribery, one day sooner or later, somebody would come up and admit or deny it. **He did not care that he smeared the whole Judiciary** to fish her out, because "after she is fished out, the suspicion on the rest would be removed" (29-30 tsn Jan. 10, 2008).[27] (Emphasis supplied)

The Committee likewise noted the inconsistencies and assumptions of Macasaet, betraying lack of veracity of the alleged bribery —

1. For instance, he said that he could not get confirmation of the bribery story given to him by his source. Later, he said that his sources "told me they had personal knowledge" but would not reveal the name of the Lady Justice (65, tsn, January 10, 2008).

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[27] *Id.* at 340-341; *id.* at 15-16.

2. His allegation that the Lady Justice (later identified as Justice Santiago) did not report for work "last week," *i.e.,* the week before his first column came out on September 18, 2007, was refuted by the Court's Public Information Officer (PIO) Atty. Midas Marquez, who testified that no Lady Justice was absent that week.

3. The date when the gift-wrapped box of money was allegedly opened by Cecilia is also uncertain because of Macasaet's conflicting allegations about it. Macasaet's first column of September 18, 2007, stated that it happened "last week," *i.e.*, sometime in the week of September 10-14, 2007.

   The next day, September 19, 2007, he, however, wrote in his column that "the five boxes (not one) of money were delivered on the day (September 3, 2007) when the Lady Justice, acting as *ponente*, acquitted" the accused Henry T. Go.

   But again, because his story about Cecilia's role in the discovery of the bribery in September 2007, was contradicted by the record of Cecilia's resignation from the Court on March 15, 2007 (Annexes "D" and "D-1", Cecilia Delis' Letter of Resignation & Clearance), Macasaet, after consulting his "source" again, changed his story when he testified on January 17, 2008. He said that, according to his source, the boxes of money were delivered, not any one time in September 2007, **but on different dates in November 2006 up to March 2007**, "before Cecilia resigned or was fired from the office of Justice Santiago" (5-6, tsn, January 17, 2008).

   That allegation is, however, refuted by the logbooks of the Security Services for the period of November 2006 to March 2007 which contain no record of the alleged deliveries of boxes of money to the office of Justice Santiago. Danilo Pablo, head of the Court's Security Services affirmed that in his ten (10) years of service in the Court, he has not received any report of boxes of money being delivered to any of the Justices (45-46, tsn, January 22, 2008).[28]

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[28] *Id.* at 341-342; *id.* at 16-17.

The Committee further wondered which of the five (5) boxes was opened and yielded money. It found —

1. x x x In his column of September 21, 2007, Macasaet alleged that Cecilia picked up the five boxes of money "several times in March" ("not last week as I mistakenly reported"), and "she never opened the first four boxes x x x **she opened the last** and saw the money because the Lady Justice was absent on that day."

   But when he testified before the Committee on January 10, 2008, Macasaet alleged that **it was "the first one** that was opened" according to his source (71, 89, 92, 125, tsn, January 10, 2008).

2. Contradicting his published story that five (5) boxes of money were delivered "on the day" the Lady Justice acquitted Henry Go, Macasaet testified at the investigation that they were delivered "**on different occasions** according to my source" (70, tsn, January 10, 2008).

   But no sooner had he attributed that information "to my source" than he admitted that it was only "**my own conclusion x x x I assumed** that the giver of the money is not so stupid as to have them delivered all in one trip. As a matter of fact, I even wondered why said boxes were not delivered in the home of the Lady Justice" (72, tsn, January 10, 2008).

3. The amount of the bribe is also questionable. For while in his own column of September 18, 2007, Macasaet stated that the gift was "estimated at Php 10 million," he later testified on January 10, 2008 that "**the amount was my own calculation** because I talked to people, I said this kind of box how much money in One Thousand Pesos bills can it hold, he told me it is ten (million). So that was a **calculation**" (77, tsn, January 10, 2008).

   He also merely "assumed that the money was in one thousand pesos bills (78, tsn, January 10, 2008). No one really knows their denomination.

   He said he was told that the size of the box where the money was placed was "this milk called **carnation in carton**" (79, tsn, January 10, 2008). But, at the final hearing on February 1, 2008, he denied that said that, — "I never said

> carnation boxes; I said milk boxes that should make a lot of difference" (84, tsn, February 1, 2008).
>
> 4. Since only one gift-wrapped box of money was opened, Macasaet admitted that he has "no knowledge" of whether the four (4) other boxes were also opened, when and where they were opened, and by whom they were opened (90, tsn, January 10, 2008). Therefore, no one knows whether they also contained money.
>
> That the five (5) boxes contained a total of ten million pesos, is just another **assumption** of Macasaet's. "It is a calculation based on estimates obtained from friends and how much five boxes can hold in one thousand peso bills, more or less ten million," he explained (91, tsn, January 10, 2008).
>
> The "sin of assumption" which is a cardinal sin in Newsbreak's Guide to Ethical Journalistic Conduct was repeatedly committed by Macasaet in writing his story about the bribery of a Lady Justice of the Supreme Court. (Annex "E", page 1, Newsbreak Guide to Ethical Journalistic Conduct).[29]

Consequently, the Committee concluded —

In view of its tenuous underpinnings, we find the bribery story in Macasaet's columns of September 18-21, 2007, and in Ms. Vitug's Newsbreak issue of September 25, 2007, **unbelievable**. Why should five boxes supposedly containing a total of Php 10 million as bribe money be delivered to the office of a Lady Justice in the Supreme Court, where it would have to pass examination by the security guards and the quizzical eyes of her own employees? Why not to her home? Or at some agreed meeting place outside the Court and her home? Or why not quietly deposit it in her bank account? And why was she absent from her office on the day of the presumably agreed date for the payment of the bribe? If the bribe was for dismissing the information against Henry Go in the Sandiganbayan, why was it paid prematurely in November 2006-March 2007 when the case of Henry Go was still up in the air and, in fact, was decided against him on April 13, 2007? The favorable resolution on his motion for reconsideration, penned by Justice Santiago, was promulgated on September 3, 2007, almost one year after the pay-off, if there was such a pay-off?

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[29] *Id.* at 342-343; *id.* at 17-18.

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The Committee considers this case not just another event that should pass unnoticed for it has implications far beyond the allocated ramparts of free speech. Needless to say, that while we espouse the enjoyment of freedom of expression by media, particularly, it behooves it to observe great circumspection so as not to destroy reputations, integrity and character so dear to every individual, more so to a revered institution like the Supreme Court. Everyone deserves respect and dignity.[30]

Finding sufficient basis to hold respondent Macasaet in indirect contempt of court, the Committee **recommended —**

The Committee finds that **the statements of respondent Amado P. Macasaet** about the Supreme Court in his "Business Circuit" columns in the September 18-21, 2007 issues of the newspaper *Malaya*, **maligning and degrading the Supreme Court and tending directly or indirectly to impede, obstruct, or degrade the administration of justice**, to be **utterly unjustified**.

WHEREFORE, the Committee believes **there exist valid grounds** for this Honorable Court, if it is so minded, **to cite Amado P. Macasaet for indirect contempt** within the purview of Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.[31] (Emphasis supplied)

Our Ruling

IN view of respondent's invocation of his right to press freedom as a defense, it is essential to first examine the nature and evolution of this preferred liberty, together with the countervailing interest of judicial independence, which includes the right to due process of law, the right to a fair trial, and the preservation of public confidence in the courts for the proper administration of justice.

Nature and History of Press Freedom

Freedom of expression, which includes freedom of speech and of the press, is one of the hallmarks of a democratic society. It has been recognized as such for centuries.

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[30] *Id.* at 343-346; *id.* at 18-21.

[31] *Id.* at 346-347; *id.* at 21-22.

The history of press freedom dates back to the English *Magna Carta*, promulgated in 1215, which established the principle that not even the lawmaker should be above the law. Through the years, many treatises on press freedom arose in reaction to various measures taken to curtail it.

In the 17th Century, John Milton wrote *Areopagitica*, a philosophical defense of the right to free speech. It was a reaction to the Licensing Order of June 14, 1643, which declared that no "book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched or put to sale by any person or persons whatsoever, unless the same be first approved of and licensed under the hands of such person or persons as both, or either of the said Houses shall appoint for the licensing of the same." Milton advocated that a written work should not be suppressed before publication. Writers of treacherous, slanderous, or blasphemous materials should first be tried according to law. Only after it has been established that their writings are of a treacherous, slanderous, or blasphemous nature should they be subsequently punished for their wrongful acts.

Sir William Blackstone, 19th Century English jurist, in his still widely cited historical and analytical treatise on English common law, aptly described the twin aspects of press freedom:

> x x x Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government. But to punish as the law does at present any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby

laid upon freedom of thought or inquiry: liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments destructive to the ends of society, is the crime which society corrects.[32] (Emphasis supplied)

In the United States, press freedom was first put into organic law with the First Amendment to its Constitution, declaring that "Congress shall make no law x x x abridging the freedom of speech, or of the press." This set in stone the basis for virtually all contemporary laws and jurisprudence on the subject of press freedom.

Our Constitutions and jurisprudence are no different. Section 4, Article III, 1987 Constitution, which in part provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x," is a provision found in the 1935 and the 1973 Constitutions.[33]

Media and Its Multiplying Roles in Democracy

Due to their preferred position in the hierarchy of civil liberties, the freedoms of speech, of expression, and of the press have progressed dramatically. As early as 1942, even before the advent of television, the distinguished U.S. appellate court Judge Learned Hand had already observed that "[t]he hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country." He concluded that media's power was an unchangeable fact of life: "Whether we like or not, we must learn to accept it." There is much truth today in those statements.

One of the notable features of recent years is the accelerated development of the media. They have grown from strength to strength, and have substantially influenced people, either favorably or unfavorably, towards those in government. The use of information technology has firmed up the media networks' hold on power. Traditional media for mass communication —

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[32] Blackstone, W., *Commentaries*, 145 (1876).

[33] Record of the Constitutional Commission: Proceedings and Debates (1987), p. 758.

newspapers, magazines, radio, and standard television — have been joined by satellite and cable television, electronic mail, short messaging and multi-media service, and the internet, giving rise to new opportunities for electronic news and information companies to even intensify their influence over the general public.

Studies show that people rely heavily on the media for their knowledge of events in the world and for impressions that form the basis for their own judgments. The media exert a strong influence on what people think and feel. Certainly, the power of Philippine media is of no small measure —

> The power of the press to influence politics is proven. Policy issues and the implementation of government programs requiring greater public discussion are sometimes displaced in the government agenda by matters that have been given more importance in the news. Public officials are obliged to attend to media queries even if these are not necessarily the most important questions of the day. Nowhere in Southeast Asia are government officials so accessible to the press. Cabinet ministers are available from the earliest hours to answer questions from radio show hosts on the news of the day involving their responsibilities.
>
> Furthermore, television news programs have spawned media celebrities whose popularity with the masses has catapulted their entry into politics. Media's focus on celebrity has infected the political culture with exaggerated concern for personality and color, and the kind of impact associated with sports and entertainment. Political parties have tended to recruit popular figures from these fields to assure they have winners in the race for seats in Congress.[34]

The reach of Philippine media is quite extensive —

> In the Philippines radio has the biggest audience among all the mass media (85 percent), followed by television at 74 percent, and print, 32 percent. Print, however, has an 82 percent reach in Metropolitan Manila, which has a population of some 10 million and is the country's business, political, and cultural center. Print

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[34] De Jesus, M.Q., Overview, Press Freedom in the Philippines (2004).

may thus be surmised to be as influential in the capital as television, which has a reach of 96 percent among residents.[35]

The mass media in a free society uphold the democratic way of life. They provide citizens with relevant information to help them make informed decisions about public issues affecting their lives. Affirming the right of the public to know, they serve as vehicles for the necessary exchange of ideas through fair and open debate. As the Fourth Estate in our democracy, they vigorously exercise their independence and vigilantly guard against infringements. Over the years, the Philippine media have earned the reputation of being the "freest and liveliest" in Asia.[36]

Members of Philippine media have assumed the role of a watchdog and have been protective and assertive of this role. They demand accountability of government officials and agencies. They have been adversarial when they relate with any of the three branches of government. They uphold the citizen's right to know, and make public officials, including judges and justices, responsible for their deeds or misdeeds. Through their watchdog function, the media motivate the public to be vigilant in exercising the citizens' right to an effective, efficient and corrupt-free government.

Open Justice and Judicial Independence

Closely linked with the right to freedom of speech and of the press is the public right to scrutinize and criticize government. The freedom to question the government has been a protected right of long-standing tradition throughout American history. There is no doubt that the fundamental freedom to criticize government necessarily includes the right to criticize the courts, their proceedings and decisions. Since the drafting of their

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[35] Teodoro, L.V., Survey of Media, Press Freedom in the Philippines (2004).

[36] Guidebook for Journalists Covering the Courts: Strengthening Judiciary-Media Relations, Asian Institute of Journalism and Communication (2004), p. 13.

Constitution over 200 years ago, American judges have anticipated and sometimes even encouraged public scrutiny of themselves, if not of the judiciary as a whole.[37]

This open justice principle, which is as fundamental to a democratic society as freedom of speech, has been an accepted doctrine in several jurisdictions. It is justified on the ground that if the determination of justice cannot be hidden from the public, this will provide: (1) a safeguard against judicial arbitrariness or idiosyncrasy, and (2) the maintenance of the public's confidence in the administration of justice.[38]

While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far.[39] Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary.

The debate over the independence of the judiciary is nothing new. More than 200 years ago, the Founding Fathers of the American Constitution engaged in heated arguments, both before and after the Constitutional Convention, focusing on the extent and nature of the judiciary's role in the newly-formed government.[40] The signers of the Declaration of Independence, well aware of the oppressive results of the unchecked political power of the King of England who established absolute tyranny over American colonies, recognized the importance of creating a stable system of justice to protect the people.

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[37] Jacobson, M.K., *Assault on the Judiciary: Judicial Response to Criticism Post-Schiavo*, 61 U. Miami L. Rev. 931 (2007).

[38] *Attorney-General v. Leveller Magazine, Ltd.,* AC 440 (1979); *Scott v. Scott,* AC 417 (1913).

[39] Coker, H.C., *Responding to Judicial Criticism*, 73 Fla. B.J. 10 (1999).

[40] Blatz, K., *The State of the Judiciary*, 62 Bench & B. Minn 26, 27 (2005).

Cognizant of the need to create a system of checks and balances to ensure that the rule of law shall rule, the resulting Constitution provided for a three-tiered system of government, so structured that no branch holds limitless power.

The judicial branch is described as the "least dangerous" branch of government.[41] But it holds a special place in the tripartite system, as it is primarily responsible for protecting basic human liberties from government encroachment. It completes the nation's system of checks and balances. It serves as an arbiter of disputes between factions and instruments of government.

In our constitutional scheme and democracy, our courts of justice are vested with judicial power, which "includes the duty x x x to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[42] The present judicial system allows the people to rely upon our courts with substantial certainty; it encourages the resolution of disputes in courtrooms rather than on the streets.

To accomplish these tasks, an independent judiciary is very vital. Judicial independence is the backbone of democracy. It is essential not only to the preservation of our justice system, but of government as well. Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court has observed that judicial independence encompasses two distinct but related concepts of independence.[43]

One concept is individual judicial independence, which focuses on each particular judge and seeks to insure his or her ability to

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[41] The Federalist No. 78.

[42] CONSTITUTION (1987), Art. VIII, Sec. 1.

[43] See Abrahamson, S.S., Remarks of the Hon. Shirley S. Abrahamson before the American Bar Association Commission on the Separation of Powers and Judicial Independence, Washington, D.C., December 13, 1996, 12 St. John's J. Legal Comment. 71 (1996).

decide cases with autonomy within the constraints of the law. A judge has this kind of independence when he can do his job without having to hear — or at least without having to take it seriously if he does hear — criticisms of his personal morality and fitness for judicial office. The second concept is institutional judicial independence. It focuses on the independence of the judiciary as a branch of government and protects judges as a class.

A truly independent judiciary is possible only when both concepts of independence are preserved — wherein public confidence in the competence and integrity of the judiciary is maintained, and the public accepts the legitimacy of judicial authority. An erosion of this confidence threatens the maintenance of an independent Third Estate.

For sure, judicial criticism can be constructive, uncovering and addressing a problem that merits public attention. Public awareness, debate, and criticism of the courts ensure that people are informed of what they are doing that have broad implications for all citizens. Informed discussion, comment, debate and disagreement from lawyers, academics, and public officials have been hallmarks of a great legal tradition and have played a vital role in shaping the law.

But there is an important line between legitimate criticism and illegitimate attack upon the courts or their judges. Attacks upon the court or a judge not only risk the inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities; they also undermine the people's confidence in the courts.

Personal attacks, criticisms laden with political threats, those that misrepresent and distort the nature and context of judicial decisions, those that are misleading or without factual or legal basis, and those that blame the judges for the ills of society, damage the integrity of the judiciary and threaten the doctrine of judicial independence. These attacks do a grave disservice to the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy, shaking the very foundation of our democratic government.

Such attacks on the judiciary can result in two distinct – yet related — undesirable consequences.[44] First, the criticism will prevent judges from remaining insulated from the personal and political consequences of making an unpopular decision, thus placing judicial independence at risk. Second, unjust criticism of the judiciary will erode the public's trust and confidence in the judiciary as an institution. Both judicial independence and the public's trust and confidence in the judiciary as an institution are vital components in maintaining a healthy democracy.

Accordingly, it has been consistently held that, while freedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy, these freedoms are **not** absolute. For, if left unbridled, they have the tendency to be abused and can translate to licenses, which could lead to disorder and anarchy.

Thus, in *Gonzales v. Commission on Elections*,[45] this Court ruled that "[f]rom the language of the specific constitutional provision, it would appear that the right (to free expression) is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude, however, a literal interpretation. Freedom of expression is **not** absolute. It would be too much to insist that, at all times and under all circumstances, it should remain unfettered and unrestrained. There are other societal values that press for recognition."[46]

In *Lagunzad v. Vda. De Gonzales*,[47] it was held that while the right of freedom of expression occupies a preferred position in the hierarchy of civil liberties, it is not without limitations. As the revered Holmes once said, the limitation on one's right to extend one's fist is when it hits the nose of another.

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[44] Kelson, S., *Judicial Independence and the Blame Game: The Easiest Target Is a Sitting One*, 15 Utah B.J. 15-16 (2002).

[45] G.R. No. L-27833, April 18, 1969, 27 SCRA 835.

[46] *Gonzales v. Commission on Elections, id.* at 858.

[47] G.R. No. L-32066, August 6, 1979, 92 SCRA 476.

Indeed, freedom of speech cannot be absolute and unconditional. In legal, political, and philosophical contexts, it is always regarded as liable to be overridden by important countervailing interests, such as state security, public order, safety of individual citizens, protection of reputation, and due process of law, which encompasses not only the right to a fair trial, but also the preservation of public confidence in the proper administration of justice.

As early as 1930, this Court, speaking through Mr. Justice George Malcolm, declared that "[a]s important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the judiciary."[48]

In *Zaldivar v. Gonzalez*,[49] the Court said that "freedom of speech and expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community."

As Mr. Justice Felix Frankfurter put it:

> x x x A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society.
>
> The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated.

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[48] *In Re: Lozano,* 54 Phil. 801 (1929).

[49] G.R. Nos. 79690-707 & 80578, October 7, 1988, 166 SCRA 316.

And one of the potent means for assuring judges their independence is a free press.[50]

Even the major international and regional human rights instruments of civil and political rights — the International Covenant on Civil and Political Rights (ICCPR),[51] the European Convention on Human Rights (ECHR),[52] the American Convention on Human Rights (ACHR),[53] and the African Charter on Human and People's Rights (ACHPR)[54] — protect both freedom of expression and the administration of justice. Freedom of expression is protected under Article 19 of the ICCPR —

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

However, Article 19 of the ICCPR is made subject to Article 14(1), which guarantees the right of individuals to "be equal before the courts and tribunals" and "be entitled to a fair x x x hearing by a competent, independent and impartial tribunal," where "[t]he press and the public may be excluded from all or part of a trial for reasons of morals, public order (*order public*) or national security in a democratic society, or when the interest

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[50] *Zaldivar v. Gonzalez, id.* at 354, citing the concurring opinion of Mr. Justice Frankfurter in *Pennekamp v. Florida,* 328 US 331, 354-356 (1946).

[51] Adopted and opened for signature, ratification and accession by the UN General Assembly Resolution 2200A (XXI), December 16, 1966, entered into force on January 3, 1976.

[52] E.T.S. No. 5, adopted November 4, 1950, entered into force on September 3, 1953.

[53] Adopted at San Jose, Costa Rica, November 22, 1969, entered into force on July 18, 1978.

[54] Adopted at Nairobi, Kenya, June 26, 1981, entered into force on October 21, 1986.

of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice x x x."

Article 10(2) of the ECHR goes further by explicitly mentioning the maintenance of the authority and impartiality of the judiciary —

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or *for maintaining the authority and impartiality of the judiciary*. (Emphasis supplied)

Judges have an affirmative duty to defend and uphold the integrity and independence of the judiciary. The courts need to be able to sanction those who obstruct their processes. The judiciary itself must continue to be a voice that explains and preserves its own independence. The respect accorded to judges is an adjunct of the social-contract necessity for impartial judges in the creation of a civil society. In the words of the great political philosopher John Locke —

> The great and chief end, therefore, for men's uniting into commonwealths, and putting themselves under government, is the preservation of their property, **to which in the state of nature there are many things wanting x x x there wants an established, settled, known law x x x there wants a known and indifferent judge, with authority to determine all differences according to the established law** x x x there often wants power to back and support the sentence when right, and to give it due execution.[55] (Emphasis supplied)

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[55] Locke, J., *Second Treatise of Government* (1689), §§ 124-126, reprinted in Locke, J., *Political Writings* 325 (1985 ed.).

A Survey of Philippine Jurisprudence

The very first case decided by the Supreme Court, *In the matter of the proceedings against Marcelino Aguas for contempt of the Court of First Instance of Pampanga*,[56] was a contempt proceeding. Before, as it is now, this Court had to use this power to impress upon contemnors the legal theory and constitutional premises of judicial legitimacy complementing popular sovereignty and public interest. Writing for the Court, Mr. Justice James Smith stated that contempt proceedings against a contemnor were against someone who had done an act or was about to do such act which "was *disrespectful to the court or offensive to its dignity*."[57]

Through the years, the Court has punished contemnors for a variety of offenses that have attempted to degrade its dignity and impeded the administration of justice.

In 1916, Amzi B. Kelly was fined ₱1,000 and sentenced to six months in prison for contempt of court after he published a letter to the editor of *The Independent* criticizing the Court for its decision to hold him in contempt for having published a book stating that various government officials, including the members of the Supreme Court, were guilty of politically assassinating General Mariano Noriel, who was executed for the killing of a political rival in 1915.[58]

In 1949, Atty. Vicente Sotto was fined ₱1,000.00 for publishing a statement in the *Manila Times* objecting to one of the High Court's decisions, citing that such decision by the majority was but another evidence of "the incompetency or narrow-mindedness of the majority of its members" and called for the resignation of the Court's entire membership "in the wake of so many mindedness of the majority deliberately committed during these last years."[59]

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[56] 1 Phil. 1 (1901).

[57] *In the matter of the proceedings against Marcelino Aguas for contempt of the Court of First Instance of Pampanga, id.* at 2.

[58] *In Re: Amzi B. Kelly,* 35 Phil. 944 (1916).

[59] *In Re: Vicente Sotto,* 82 Phil. 595 (1949).

In 1987, Eva Maravilla-Ilustre,[60] in almost identical letters dated October 20, 1986 sent to four (4) Justices of the Supreme Court (all members of the First Division), stated among others —

> It is important to call your attention to the dismissal of (case cited) by an untenable minute-resolution x x x which we consider as an unjust resolution deliberately and knowingly promulgated by the First Division of the Supreme Court of which you are a member.
>
> We consider the three minute-resolutions x x x railroaded with such hurry/promptitude unequalled in the entire history of the SC under circumstances that have gone beyond the limits of legal and judicial ethics.
>
> There is nothing final in this world. We assure you that this case is far from finished by a long shot. For at the proper time, we shall so act and bring this case before another forum where the members of the Court can no longer deny action with minute resolutions that are not only unjust but are knowingly and deliberately promulgated x x x.
>
> Please understand that we are pursuing further remedies in our quest for justice under the law. We intend to hold responsible members of the First Division who participated in the promulgation of these three minute-resolutions in question x x x.
>
> In our quest for justice, we wish to avoid having injustice to anyone, particularly the members of the First Division, providing that they had no hand in the promulgation of the resolution in question. x x x If, however, we do not hear from you after a week, then we will consider your silence that you supported the dismissal of our petition. We will then be guided accordingly.[61]

The letter to one of the Justices further stated —

> We leave the next move to you by informing us your participation x x x. Please do not take this matter lightly. x x x The moment we

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[60] *In the Matter of Proceedings for Disciplinary Action Against Atty. Wenceslao Laureta and of Contempt Proceedings Against Eva Maravilla-Illustre in G.R. No. 68635, entitled "Eva Maravilla-Illustre vs. Hon. Intermediate Appellate Court, et al.,"* G.R. No. 68635, March 12, 1987, 148 SCRA 382.

[61] *Id.* at 390-391.

take action in the plans we are completing, we will then call a press conference with TV and radio coverage. Arrangements in this regard are being done. The people should or ought to know why we were thwarted in our quest for plain justice.[62]

These letters were referred by the First Division *en consulta* to the Court *en banc*.

True to her threats, after having lost her case before the Supreme Court, Ilustre filed on December 16, 1986 an affidavit-complaint before the Tanodbayan, charging, among others, some Justices of both the Supreme Court and the CA with knowingly and deliberately rendering "unjust resolutions."

On January 29, 1987, the Supreme Court *en banc* required Ilustre to show cause why she should not be held in contempt for her foregoing statements, conduct, acts, and charges against the Supreme Court and/or official actions of the justices concerned which, unless satisfactorily explained, transcended the permissible bounds of propriety and undermined and degraded the administration of justice.

In her answer, Ilustre contended, *inter alia*, that she had no intention to affront the honor and dignity of the Court; that the letters to the individual justices were private in character; that the Court was estopped, having failed to immediately take disciplinary proceedings against her; and that the citation for contempt was a vindictive reprisal against her.

The Supreme Court found her explanation unsatisfactory. The claim of lack of evil intention was disbelieved in the face of attendant circumstances. Reliance on the privacy of communication was likewise held as misplaced. "Letters addressed to individual Justices in connection with the performance of their judicial functions become part of the judicial records and are a matter of public concern for the entire Court." (Underscoring supplied)

The Court likewise stated that it was only in the exercise of forbearance that it refrained from immediately issuing a show-

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[62] *Id.* at 392-393.

cause order, expecting that she and her lawyer would realize the unjustness and unfairness of their accusations. Neither was there any vindictive reprisal involved. "The Court's authority and duty under the premises is unmistakable. It must act to preserve its honor and dignity from the scurrilous attacks of an irate lawyer, mouthed by his client, and to safeguard the morals and ethics of the legal profession."

In resumè, the Court found that Ilustre had transcended the permissible bounds of fair comment and criticism to the detriment of the orderly administration of justice: (a) in her letters addressed to the individual Justices, quoted in the show-cause Resolution, particularly the underlined portions thereof; (b) in the language of the charges she filed before the Tanodbayan quoted in the same Resolution; (c) in her statement, conduct, acts, and charges against the Supreme Court and/or official actions of the Justices concerned and her description of improper motives; and (d) in her unjustified outburst that she could no longer expect justice from the Court.

> The fact that said letter was not technically considered pleadings nor the fact that they were submitted after the main petition had been finally resolved does not detract from the gravity of the contempt committed. The constitutional right of freedom of speech or right to privacy cannot be used as a shield for contemptuous acts against the Court.[63]

Ilustre was fined ₱1,000.00 "for contempt," evidently considered as **indirect**, taking into account the penalty imposed and the fact that the proceedings taken were not summary in nature.

In *Perkins v. Director of Prisons*,[64] the Court had an occasion to examine the fundamental foundations of the power to punish for contempt: "The power to punish for contempt is **inherent** in all courts; its existence is **essential** to the preservation of order in judicial proceedings and to the enforcement of judgments,

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[63] *Id.* at 421.

[64] 58 Phil. 271 (1933).

orders, and mandates of the courts, and, consequently, to the due administration of justice."[65]

The Court there held that "the exercise of this power is as old as the English history itself, and has always been regarded as a necessary incident and attribute of courts. Being a common-law power, inherent in all courts, the moment the courts of the United States were called into existence they became vested with it. It is a power coming to us from the common law, and, so far as we know, has been universally admitted and recognized."[66]

After World War II, this Court reiterated it had an inherent power to punish for contempt, to control in the furtherance of justice the conduct of ministerial officers of the Court including lawyers and all other persons connected in any manner with a case before the Court.[67] This power to punish for contempt is "**necessary** for its own protection against improper interference with the due administration of justice x x x. It is not dependent upon the complaint of any of the parties-litigant."[68] These twin principles were to be succinctly cited in the later case of *Zaldivar v. Gonzales*.[69]

Of course, the power to punish for contempt is exercised on the **preservative principle**. There must be caution and hesitancy on the part of the judge whenever the possible exercise of his awesome prerogative presents itself. "The power to punish for contempt," as was pointed out by Mr. Justice Malcolm in

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[65] *Perkins v. Director of Prisons, id.* at 274, citing *Ex parte Terry,* 128 US 225, 32 L Ed., 405; *In re Kelly,* 35 Phil. 944; *State v. Magee Publishing Company,* 38 ALR 142, 144.

[66] *Id.* at 274-275, citing 4 Lewis' *Bl. Com.*, Sec. 286, p. 1675; Oswald, *Contempt*, Canadian ed., pp. 1-3, 6 RCL 489; *State v. Morrill,* 16 Ark. 390; *State ex rel. Rodd v. Verage,* 177 Wis. 295, 23 ALR 491, 187 NW 830; and *People ex rel. Brundage v. Peters,* 305 Ill. 223; 26 ALR 16, 137 NE 118.

[67] *In Re: Vicente Sotto, supra* note 59.

[68] *Halili v. Court of Industrial Relations,* G.R. No. L-24864, April 30, 1985, 136 SCRA 112.

[69] *Supra* note 49.

Villavicencio v. Lukban,[70] "should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power to retain that respect without which the administration of justice must falter or fail." But when called for, most especially when needed to preserve the very existence and integrity of no less than the Highest Court, this principle bears importance.

In the 1995 case *People v. Godoy*,[71] the Court, citing *In Re: Vicente Sotto*,[72] had the opportunity to define the relations of the courts and of the press. Quoting the statements made by Judge Holmes in *U.S. v. Sullen*,[73] the Court said:

> The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. x x x **In a clear case where it is necessary in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, the Court will not hesitate to exercise undoubted power to punish for contempt**. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.[74] (*Emphasis supplied*)

Thus, while the Court in *Godoy* agreed that our Constitution and our laws recognize the First Amendment rights of freedom of speech and of the press, these two constitutional guaranties

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[70] 39 Phil. 778 (1919).

[71] 312 Phil. 977 (1995).

[72] *Supra* note 59.

[73] 36 F. 2d 220.

[74] *People v. Godoy, supra* note 71, at 1003.

"must not be confused with an abuse of such liberties." Quoting *Godoy* further —

> Obstructing, by means of the spoken or written word, the administration of justice by the courts has been described as an abuse of the liberty of the speech or the press such as will subject the abuser to punishment for contempt of court.[75]

Finally, in the more recent 2007 case *Roxas v. Zuzuarregui*,[76] the Court *en banc* in a unanimous *per curiam* resolution imposed a ₱30,000 fine on Atty. Romeo Roxas for making "unfair and unfounded accusations against a member of this Court, and mocking the Court for allegedly being part of the wrongdoing and being a dispenser of injustice." We found the letter of Atty. Roxas full of "contemptuous remarks that tended to degrade the dignity of the Court and erode public confidence that should be accorded to it." We also said that his invocation of free speech and privacy of communication "will not, however, free him from liability. As already stated, his letter contained defamatory statements that impaired public confidence in the integrity of the judiciary. The making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein. Free expression must not be used as a vehicle to satisfy one's irrational obsession to demean, ridicule, degrade and even destroy this Court and its magistrates." Accordingly, Atty. Roxas was found guilty of indirect contempt of court and fined ₱30,000.00, with a warning that a repetition of a similar act would warrant a more severe penalty.

Application of Existing Jurisprudence to the Case at Bar

In determining the liability of the respondent in this contempt proceeding, we weigh the conflicting constitutional considerations

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[75] *Id.* at 1004.

[76] G.R. Nos. 152072 & 152104, July 12, 2007, 527 SCRA 446.

— respondent's claim of his right to press freedom, on one hand; and, on the other hand, ensuring judicial independence by upholding public interest in maintaining the dignity of the judiciary and the orderly administration of justice — both indispensable to the preservation of democracy and the maintenance of a just society.

The apparently conflicting constitutional considerations summed up by a distinguished former Judge of the Supreme Court of India, Justice H.R. Khanna, bears a hand in resolving the issue —

> There are one or two matters to which I would like to make pointed reference in the context of the freedom of the press. One of them relates to the danger of trial by the press. Certain aspects of a case are so much highlighted by the press that the publicity gives rise to strong public emotions. The inevitable effect of that is to prejudice the case of one party or the other for a fair trial. We must consider the question as to what extent are restraints necessary and have to be exercised by the press with a view to preserving the purity of judicial process. At the same time, we have to guard against another danger. A person cannot x x x by starting some kind of judicial proceedings in respect of matter of vital public importance stifle all public discussions of that matter on pain of contempt of court. A line to balance the whole thing has to be drawn at some point. It also seems necessary in exercising the power of contempt of court x x x *vis-à-vis* the press that no hyper-sensitivity is shown and due account is taken of the proper functioning of a free press in a democratic society. This is vital for ensuring the health of democracy. At the same time, the press must also keep in view its responsibility and see that nothing is done as may bring the courts x x x into disrepute and make people lose faith in these institution(s). One other matter which must not be lost sight of is that while comment is free, facts are sacred.[77]

We have no problems with legitimate criticisms pointing out flaws in our decisions, judicial reasoning, or even how we run our public offices or public affairs. They should even be

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[77] Khanna, H.R., Freedom of Expression with Particular Reference to Freedom of the Media, 2 SCC (Jour) 1 (1982).

constructive and should pave the way for a more responsive, effective and efficient judiciary.

Unfortunately, the published articles of respondent Macasaet are not of this genre. On the contrary, he has crossed the line, as his are baseless scurrilous attacks which demonstrate nothing but an abuse of press freedom. They leave no redeeming value in furtherance of freedom of the press. They do nothing but damage the integrity of the High Court, undermine the faith and confidence of the people in the judiciary, and threaten the doctrine of judicial independence.

A veteran journalist of many years and a president of a group of respectable media practitioners, respondent Macasaet has brilliantly sewn an incredible tale, adorned it with some facts to make it lifelike, but impregnated it as well with insinuations and innuendoes, which, when digested entirely by an unsuspecting soul, may make him throw up with seethe. Thus, he published his highly speculative articles that bribery occurred in the High Court, based on specious information, without any regard for the injury such would cause to the reputation of the judiciary and the effective administration of justice. Nor did he give any thought to the undue, irreparable damage such false accusations and thinly veiled allusions would have on a member of the Court.

The Investigating Committee could not have put it any better when it found respondent feigning his "highest respect for this Court" —

Macasaet's diatribes against the Court generate public distrust in the administration of Justice by the Supreme Court, instead of promoting respect for its integrity and honor. They derogate his avowal of "highest respect for this Court" (10, tsn, Jan. 10, 2008); his declaration that he has "always upheld the majesty of the law as interpreted by the Court" (96, tsn, Jan. 10, 2008); that his opinion of the Court has actually been "elevated ten miles up" because of its decisions in the cases involving Proclamation No. 1017, the CPR, EO 464, and the People's Initiative (97, tsn, Jan. 10, 2008); that he has "done everything to preserve the integrity and majesty of the Court and its jurists" (84-85, tsn, Feb. 1, 2008); that he wants "the

integrity of the Court preserved because this is the last bastion of democracy" (32, tsn, Jan. 10, 2008).

These tongue-in cheek protestations do not repair or erase the damage and injury that his contemptuous remarks about the Court and the Justices have wrought upon the institutional integrity, dignity, and honor of the Supreme Court. As a matter of fact, **nowhere in his columns** do we find a single word of **respect for the Court** or the **integrity and honor of the Court**. On the contrary, what we find are allegations of "pernicious rumor that the **courts are dirty**," suspicions that the jurists are "**thieves**," that the Highest Court has a "**soiled reputation**," and that the Supreme Court has a "**sagging reputation**."

He admitted that the rumor about the courts being "dirty" referred "specifically (to) the Supreme Court" (100, tsn, Feb. 1, 2008) and was "**based on personal conclusion** which (was), in turn, based on confidential information fed to me. It is in that respect that I thought that I have (a) duty to protect and keep the Honor of this Court" (98, tsn, Feb. 1, 2008).

He unburdened his heretofore hidden anger, if not disgust, with the Court when he clarified "that the word **dirty x x x is not necessarily related to money**" (101, tsn, Feb. 1, 2008). "It is my belief that lack of familiarity with the law is x x x kind of dirty" referring to then Associate Justice Artemio Panganiban's support for, and Chief Justice Hilario Davide, Jr.'s act of swearing into office then Vice-President Gloria Macapagal Arroyo as Acting President of the Philippines even while then President Joseph Estrada was still in Malacañang, which Macasaet believed to be "**quite a bit of dirt**" (102-106, tsn, Feb. 1, 2008).[78]

To reiterate the words of the Committee, this case is "not just another event that should pass unnoticed for it has implications far beyond the allocated ramparts of free speech."[79] To allow respondent to use press freedom as an excuse to capriciously

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[78] *Rollo,* pp. 344-345; Report and Recommendation (*Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in **Malaya** Dated September 18, 19, 20, and 21, 2007*), pp. 19-20.

[79] *Id.* at 346; *id.* at 22.

disparage the reputation of the Court and that of innocent private individuals would be to make a mockery of this liberty.

Respondent has absolutely no basis to call the Supreme Court a court of "thieves" and a "basket of rotten apples." These publications directly undermine the integrity of the justices and render suspect the Supreme Court as an institution. Without bases for his publications, purely resorting to speculation and "fishing expeditions" in the hope of striking — or creating — a story, with utter disregard for the institutional integrity of the Supreme Court, he has committed acts that degrade and impede the orderly administration of justice.

We cannot close our eyes to the comprehensive Report and Recommendation of the Investigating Committee. It enumerated the inconsistencies and assumptions of respondent which lacked veracity and showed the reckless disregard of whether the alleged bribery was false or not.[80]

Indeed, the confidential information allegedly received by respondent by which he swears with his "heart and soul"[81] was found by the Investigating Committee *unbelievable*. It was a story that reeked of urban legend, as it generated more questions than answers.[82]

Respondent Macasaet's wanton disregard for the truth was exhibited by his apathetic manner of verifying the veracity of the information he had gathered for his September 18, 19, 20, and 21, 2007 articles concerning the alleged bribery of a Lady Justice. His bases for the amount of money, the number of boxes, the date of delivery of the boxes, among other important details, were, by his own admission founded on personal assumptions. This nonchalant attitude extended to his very testimony before the investigating committee —

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[80] See notes 26 and 27.

[81] TSN, January 10, 2008, pp. 92-93, 113.

[82] See note 28.

Justice Aquino:	You did not endeavor to verify the information given by your source before publishing the story about the bribery?
Mr. Macasaet:	I tried, I could not get confirmation, I thought that eventually my effort at consistently trying or exposing the alleged bribery one day sooner or later somebody will come up and admit or deny.
x x x	x x x x x x
Justice Vitug:	Do you confirm the fact of authorship of the columns of September 18, 19, 20, and 21, 2007?
Mr. Macasaet:	On a stack of Bible, I confirm it.
Justice Vitug:	Does that mean that you also confirm the accuracy of those information that were said?
Mr. Macasaet:	I am not confirming the accuracy of the information and I think that is precisely the reason for this hearing, I must repeat that the purpose is to fish [the Lady Justice] out so that the rest of the Lady Justices in all the Courts suspicion can be removed from them. I failed in the sense that one denied, she felt alluded to and said she is not involved.[83]

Respondent thus admits to having written his articles as means to "fish out" the Lady Justice involved in an alleged bribery fed to him by his source, with reckless disregard of whether or not such bribery indeed took place. It defies reason why any responsible journalist would go on to publish any material in a newspaper of general circulation without having ascertained even the five W's and one H of the story.[84]

That he could not, through his extensive network of informants, confirm the approximate date when the alleged bribery took

[83] TSN, January 10, 2008, pp. 28-40.

[84] The five W's and one H: Who, What, When, Where, Why, and How are generally known as the basic information that all news stories should contain.

place, the identities of the persons involved, or any other important detail, before he began his series of articles only leads to the rational conclusion that he did not care whether or not the story he published was true. His aim, as he admits, was to go on a fishing expedition to see if someone would confirm or deny his now clearly baseless accusations. This practice of "fishing" for information by publishing unverified information in a manner that leads the reading public to believe such is true cannot be tolerated.

Aggravating respondent's affront to the dignity of the Court is his unwillingness to show any remorse or repentance for his contemptuous acts. In fact, as he made clear in his testimony before the Investigating Committee when asked what his thoughts were about his having published the instant articles, he replied that he was "happy in the sense that [he] did a job in [his] best lights and the effort ended up in the creation of [the investigating panel]."[85]

However, such assertions of having acted in the best interest of the Judiciary are belied by the fact that he could have caused the creation of an investigating panel to look into such allegations in a more rational and prudent manner. In the words of the Investigating Committee —

> If he had no malice toward the Court, if, as he professes, the purpose of his columns was to save the integrity and honor of the Court, Macasaet should, and could, have reported the rumored bribery directly to the Chief Justice and asked for its investigation. He should have refrained from calling the Court names, before giving it a chance to act on his report and on his suggestion to investigate the matter. Since he knew the name of the Court employee who allegedly discovered the bribe money, the Court could have begun its investigation with her to ascertain the identity of the nameless Lady Justice and the veracity of the rumored bribery. His disparaging remarks about the Court and jurists in conjunction with his unverified report on the alleged bribery were totally uncalled for and unjustified.[86]

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[85] *Rollo,* p. 103; TSN, January 10, 2008.

[86] *Id.* at 346.

It is precisely because of his failure to abide by the tenets of responsible journalism that we accept the findings of the Investigating Committee in holding respondent Macasaet guilty of indirect contempt of court. He must be made accountable for his complete failure to exercise even a single vestige of responsible journalism in publishing his unfounded and ill-thought diatribes against the Judiciary and the honorable people who serve it.

Respondent also asserts that the subject matter of his articles is within the exclusive jurisdiction of Congress. He cites Section 2, Article XI of the 1987 Constitution which partly states that "x x x members of the Supreme Court x x x may be removed from office, on impeachment for, and conviction of x x x bribery x x x" and Section 3(1), Article XI, which provides that "[t]he House of Representatives shall have the exclusive power to initiate all case of impeachment."

We cannot agree. What Macasaet conveniently forgets is that no impeachment complaint has been filed against Mme. Justice Ynares-Santiago. Thus, his cited constitutional provisions do not come into play.

Respondent claims that there is a violation of his right to due process. From the time his articles were published, no formal charge has been filed against him as required under Section 3, Rule 71 of the 1997 Rules of Civil Procedure.

Respondent fails to see, however, that under Section 4 of the same Rule, proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed, by an order or any other formal charge requiring respondent to show why he should not be punished for contempt. Our Resolution dated September 25, 2007 satisfies the Rule. He cannot validly claim that such resolution is vague. He cannot feign ignorance of the contents of his September 18, 19, 20, and 21, 2007 articles in the **Malaya**.

Rule 71 of the 1997 Rules of Civil Procedure pertinently provides:

SEC. 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt.

x x x x x x x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x

SEC. 7. *Punishment for indirect contempt*. — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x (Underscoring supplied)

We are not unaware of the vigorous dissent of then Associate Justice, now our Chief Justice, Reynato S. Puno, in an earlier case,[87] in which he so lucidly argued for the right to journalistic shield, behind which the Dissenting Opinion of an esteemed colleague, Mr. Justice Carpio, and respondent Macasaet, take full refuge. While we hold his thesis in high regard, the case at bar does not fall within his erudite defense of press freedom. The critical issues then were the right of newsmen to refuse subpoenas, summons, or "invitations" to appear in administrative investigations, and not to reveal their confidential sources of information under R.A. No. 53, as amended. None of these are the issues at hand. Be that as it may, elementary decision-making teaches that we cite the majority opinion as precedent, not lonely dissenting opinions.[88]

In his Dissenting Opinion, Mr. Justice Carpio assails the Committee proceedings as "fatally defective for patent denial

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[87] *In Re: Emil P. Jurado,* A.M. No. 93-2-037 SC, April 6, 1995, 243 SCRA 299.

[88] Then Associate Justice, now Chief Justice Puno was joined by Justice Padilla in his Dissenting Opinion in the *Jurado* case where the Court voted 10-3, with two justices taking no part.

of due process"[89] because "when the witnesses the Committee summoned testified, the Committee monopolized the right to propound questions to the witnesses, denying to Macasaet such right."[90] He continues to say that "[w]ith the procedure the Committee adopted, Macasaet was reduced to a passive participant, unable to subject the testimonies of adverse witnesses to rigorous probing under cross-examination. As matters stand, Macasaet will be subjected to punitive sanctions based on evidence he had no opportunity to scrutinize."[91]

We disagree on triple grounds.

First, the proceedings of the Committee are presumed to be regular. Thus, the *onus probandi* to prove otherwise rests on Macasaet, not on the Committee. Suffice it to say that the Dissenting Opinion which cites *People v. Godoy* as to the "criminal" character of a contempt proceeding,[92] fails to state what *Godoy* likewise instructs —

> Strictly speaking however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.[93]

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[89] Dissenting Opinion, p. 8.

[90] *Id.*

[91] *Id.* at 9.

[92] *Id.* at 7.

[93] *Supra* note 71, at 1001.

Second**,** assuming *arguendo* that Macasaet was not able to cross-examine his witnesses, this does not necessarily mean that his right to due process of law was violated.

The right of an accused to cross-examine the witnesses against him, although an adjunct of the Constitutional right "to meet the witnesses face to face,"[94] **can be waived when not timely asserted**. In the case of Macasaet, never did he assert his right to cross-examine the witnesses against him despite the opportunity to do so. During the entire course of the proceedings in the Committee, respondent was vigorously represented by counsel *de parte*. Respondent or his counsel could have moved to cross-examine the adverse witnesses. Respondent had every opportunity to do so. Lamentably, he failed to exercise the said right.

Interestingly, during the last hearing date, counsel for respondent requested that respondent be allowed to say something, which the Committee granted. Respondent then proceeded with a lengthy discourse, all of 45 pages, on everything and anything, except his right to cross-examination.[95] Verily, it cannot be validly claimed now that his right to cross-examine was violated.

Third**,** the Court is bereft of any power to invoke the right to cross-examine the witnesses against respondent, for and in his behalf. Otherwise, the Court will be acting as his counsel, which is absurd.

Just a Word More

A free press is regarded as a key pillar of democracy. Reporters must be free to report, expose, and hold government officials and agencies — including an independent judiciary — accountable. Press attention surrounding the judiciary ensures public accountability. Such publicity acts as a check on judicial competence and integrity, exposes inefficiencies and irregularities, keeps vigil over various public interest cases, and puts pressure on responsible judicial officials. This freedom has been used and has benefited the cause of justice. The press has become

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[94] CONSTITUTION (1987), Art. III, Sec. 14 (2).

[95] TSN, February 1, 2008, pp. 84-129.

an important actor — a judicial watchdog — in the ongoing judicial transformation. When properly validated, its acts are protected speech from an accepted function.

Freedom, however, has not guaranteed quality journalism. The press has been vulnerable to a host of legitimate criticisms such as incompetence, commercialism, and even corruption. By disproportionately informing the public about specific court processes, or by spreading unsubstantiated allegations about corruption and other forms of judicial misconduct, the press dramatically undermines the public's faith in the courts and threatens the very foundation of our democratic government.

Oftentimes, journalists writing about the judiciary and court cases lack basic knowledge of the law and judicial procedures, on the basis of which they draw faulty conclusions which they pass on to their readers as gospel truths. Trial by publicity also influences the independence of judges as the public is fed with partial information and vocal opinions, and judges are pressured to decide in accordance with the public opinion. Faith in the judiciary is undermined when judges rule against the expectations of the public which has been brainwashed by dramatic reports and graphic comments. In some cases, unchecked rumors or allegations of irregularities are immediately published because journalists lack professional competence to verify the information, or are simply eager to break the news and attract a wider readership.

The role of the press in relation to the judiciary needs to be regulated. This can be done through voluntary codes of conduct on the part of the press and through judicial policies, such as the rule on *sub judice* and contempt of court rulings. The absence of clear voluntary codes developed by the press, as its self-regulator, strengthens the need for the Court to use its power in the meantime to cite critics for contempt. This is necessary in cases where such criticism is obviously malicious or in violation of the *sub judice* rule, or where there is an evident attempt to influence the outcome of a case. Judges have the duty to defend and uphold the integrity and independence of the judiciary. They should sanction those who obstruct or impede the judicial

processes. The effective administration of justice may only be realized with the strong faith and confidence of the public in the competence and integrity of the judiciary, free from political and popular pressure.

Criticism at every level of government is certainly welcome. After all, it is an essential part of the checks and balances in our republican system of government. However, criticisms should not impede or obstruct an integral component of our republican institutions from discharging its constitutionally-mandated duties.

As the Court said in *In Re: Almacen*:[96]

> Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizen whom it is expected to serve.
>
> x x x x x x x x x
>
> But it is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. x x x[97]

All told, illegitimate and uninformed criticisms against the courts and judges, those which cross the line and attempt to subvert the judicial process, must be avoided. They do a great disservice to the Constitution. They seriously mislead the public as to the proper functioning of the judiciary. While all citizens have a right to scrutinize and criticize the judiciary, they have an ethical and societal obligation not to cross that too important line.

Senator Ernesto Maceda, the seasoned politician who has graced both the executive and the legislative departments in various capacities, in a Privilege Speech, once appealed for voluntary self-restraint with respect to this Court —

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[96] G.R. No. L-27654, February 18, 1970, 31 SCRA 562.

[97] *In Re: Almacen, id.* at 578-580.

There are proper procedures for dealing with instances of official misdemeanor without setting an entire institution on fire. Arson is not the best means for pest-control.

In case of possibility of corruption in the Supreme Court, one possible means is the initiation of impeachment proceedings against specifically identified justices. A move for impeachment, of course, requires much sobriety and solid evidence. Whatever charges are brought forward must be substantiated. Those who dare prosecute must come into the open and append their names to the accusations they make, with courage and conviction. This is the manner civil society conserves its civility x x x.

The ends of justice are not served by heckling nor by crude insinuation or by irresponsible reporting. The house of democracy is never strengthened by those who choose to throw rocks under the cover of darkness and anonymity. The institutions of our liberty are never enriched by the irresponsible accusations of the uninformed. The bedrocks of our Republic are not reinforced by those who evade responsibility under the veil of freedom.[98]

During interpellation, he went on to say —

x x x And in the context of what I have just said, I think that all newspapers, all media are welcome to do their worse, criticize the members of the Executive Department, Members of the Senate, and any other agency of the Government. But I am just suggesting that when it comes to the judiciary, and specifically to the Supreme Court, that a different policy, one of more caution, should be adopted precisely because x x x people may lose faith in the Executive or the President; they may lose faith in Congress, the Congressmen and the Senators, but as long as they have their faith unshaken and complete in the last bulwark of democracy x x x which is the Supreme Court, then our democracy will survive.[99]

Each of us has important responsibilities in a constitutional democracy. We, judges, will continue to discharge our judicial functions with fairness. We urge all and sundry to abide by theirs. We need to respect each other. As the golden rule goes

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[98] Maceda, E.M., In Defense of the Supreme Court, Privilege Speech delivered on the Senate Floor, February 2, 1993.

[99] *Id.*

— let us not do to others what we do not want others to do to us. ***Igalang natin ang isa't-isa. Huwag nating gawin sa iba ang ayaw nating gawin nila sa atin***.

Given the gravity of respondent Macasaet's improper conduct, coupled with the recalcitrant manner in which he responded when confronted with the reality of his wrongdoing, a penalty of fine in the amount of ₱20,000.00 would be right and reasonable.

Disposition

WHEREFORE, the Court declares respondent Amado P. Macasaet *GUILTY* of indirect contempt of court and sentences him to pay a fine of ₱20,000.00, in accordance with Sections 3(d) and 7, Rule 71 of the 1997 Rules of Civil Procedure.

SO ORDERED.

Quisumbing, Austria-Martinez, Corona, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J., respectfully reiterates his Dissent in the *In re:* Emil Jurado case and votes to dismiss the contempt charge.

Carpio, J., see dissenting opinion.

Carpio Morales, J., joins the dissent of *J*. Carpio.

Tinga, J., in the result.

Ynares-Santiago, J., no part.

DISSENTING OPINION

CARPIO, *J*.:

The Case

This resolves a contempt charge[1] against respondent Amado A.P. Macasaet (Macasaet), a newspaper columnist, for authoring publications imputing bribery to a member of this Court.

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[1] Initiated by the Court *motu proprio* under Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.

The Facts

Macasaet writes a daily column, "Business Circuit," in *Malaya*, a newspaper of general circulation. In the 18-21 September 2007 issues of *Malaya,* Macasaet ran a story, based on information obtained from confidential sources, of an alleged bribery in the Court committed as follows: on separate occasions in the second week of September 2007,[2] five[3] boxes containing cash worth ₱10 million were delivered to the Court and received by a certain "Cecilia," a staff of an unnamed lady Justice, who opened one of the boxes and saw its contents. Forthwith, the Justice terminated "Cecilia's" employment. The payoff was made allegedly in connection with a decision rendered by the Justice "acquitting" a Filipino-Chinese businessman. Macasaet's story, which carried commentaries on the state of the judiciary and reputation of judges,[4] exhorted "Cecilia" to divulge everything she knows about the alleged bribery and the Court to investigate the matter.

Subsequently, *Newsbreak*, an online magazine, posted on its website[5] a news report that the Court is investigating a bribery

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[2] Macasaet's column of 18 September 2007 stated that the bribery took place a "week" before 18 September 2007. Macasaet later changed the date to coincide with the "acquittal" of a Chinese-Filipino litigant (subsequently identified as Henry Go in G.R. No. 172602 whose motion for reconsideration of the dismissal of his petition was granted on 3 September 2007). When he testified during the investigation of this case, Macasaet again changed the date of the pay-off, this time to cover the period November 2006 - 15 March 2007.

[3] Macasaet's column of 18 September 2007 mentioned only a single box.

[4] The relevant comments are: "the gift gives proof to the pernicious rumor that the courts are dirty" (18 September 2007 issue); "[t]he court is like a basket of apples. There are a few which are rotten[;] [t]hat makes the whole basket rotten" (18 September 2007 issue); "[t]he names and reputations of highly-respected jurists must be saved from suspicions they are thieves" (18 September 2007 issue); "[t]he lady justice shamed her court. She should resign or be impeached" (19 September 2007 issue); Cecilia has "a duty to save the sagging reputation of the Supreme Court" (20 September 2007 issue); and the resignation or impeachment of the justice involved "is the only way the soiled reputation of the Highest Court could be restored" (20 September 2007 issue).

[5] www.newsbreak.com.ph

incident based on facts substantially similar[6] to what Macasaet wrote. Written by Marites Danguilan Vitug (Vitug), *Newsbreak* editor, and Aries Rufo (Rufo), *Newsbreak* reporter, the news report named Justice Consuelo Ynares-Santiago as the member of the Court involved in the alleged bribery and one Cecilia Delis (Delis)[7] as her staff whose employment she terminated.

On 24 September 2007, Justice Santiago issued a statement denying the "accusations and insinuations" published in *Malaya* and *Newsbreak*. Justice Santiago also asked the Court to investigate the matter.

In a Resolution dated 25 September 2007, the Court *en banc* required Macasaet to explain "why no sanction should be impose[d] on him for indirect contempt of court" under Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.[8] After Macasaet submitted his compliance and Delis her affidavit, the Court, in the Resolution of 16 October 2007, created a Committee, composed of former members of the Court,[9] to

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[6] The *Newsbreak* story mentioned only a "gift-wrapped box" containing cash "estimated" at ₱10 million.

[7] Also referred to in other parts of the records as Daisy Cecilia Muñoz Delis.

[8] The Resolution reads in full:

> Upon evaluation of the columns "Business Circuit" of Amado P. Macasaet in the September 18, 19, 20, and 21, 2007 issues of the *Malaya*, it appears that x x x certain statements and innuendos therein tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.
>
> WHEREFORE, Amado P. Macasaet is ORDERED TO EXPLAIN why no sanction should be impose[d] on him for indirect contempt of court in accordance with Section 3(d), (Rule 71) of the 1997 Rules of Civil Procedure, within five (5) days from receipt hereof.

[9] Justice Carolina Griño-Aquino, as Chairperson, with Justices Vicente V. Mendoza and Romeo Callejo, Sr. as members. However, Justices Mendoza and Callejo recused themselves from the Committee and were replaced by Justices Jose C. Vitug (ret.) and Arturo Buena (ret.), respectively. Justice Buena also recused himself from the Committee and was replaced by Justice Justo Torres (ret.).

"receive evidence from all parties concerned" and submit its report and recommendation within 30 days from the start of its hearing. Macasaet, Vitug, Rufo, Delis and other Court employees[10] appeared and testified before the Committee.

Macasaet, Vitug and Rufo uniformly testified that they obtained the information on the alleged bribery from their respective confidential sources. Delis denied having received or opened any box containing cash intended for Justice Santiago. While admitting that she was a staff of Justice Santiago, Delis denied having been fired from service and claimed that she resigned effective 15 March 2007. Danilo Pablo of the Court's Security Division testified that while visitors to the Court are listed in the logbook at the Court's gate, the security personnel, as a matter of policy, do not open gifts or boxes intended for members of the Court.

It was determined during the hearings conducted by the Committee that the case referred to in Macasaet and *Newsbreak's*[11] publications is G.R. No. 172602 (*Henry T. Go v. The Fifth Division, Sandiganbayan*). The petition in G.R. No. 172602 sought the nullification of the Sandiganbayan's ruling denying quashal of the Information filed against petitioner Henry T. Go (Go) for violation of Section 3(g), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). In a Decision dated 13 April 2007, penned by Justice Romeo J. Callejo, Sr., the Third Division, by a divided vote,[12] dismissed the petition in G.R. No. 172602. Go sought reconsideration and while his motion was pending, Justice Callejo retired from the Court. In the Resolution dated 3 September 2007, penned by Justice Santiago,

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[10] Danilo Pablo, Judicial Staff Officer, Security Division; Araceli Bayuga, Cashier; and Midas P. Marquez, Public Information Officer and Chief of Staff, Office of the Chief Justice.

[11] In its report, Newsbreak also mentioned a second case involving a "341-hectare prime property in Quezon City."

[12] Justices Alicia Austria-Martinez and Minita Chico-Nazario concurred in the ruling. Justice Santiago, joined by Justice Antonio Eduardo Nachura, filed a dissenting opinion.

a Special Third Division, again by a divided vote,[13] granted Go's motion, reversed the Decision of 13 April 2007, and dismissed the Information filed against Go. The respondent sought reconsideration which awaits resolution.

In its Report and Recommendation dated 10 March 2008 (Report), the Committee found that "there exist valid grounds x x x to cite x x x Macasaet for indirect contempt x x x." The Report found that (1) Macasaet's publications were false, baseless,[14]

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[13] Justices Adolfo Azcuna and Cancio Garcia concurred in the ruling. Justice Alicia Austria-Martinez, joined by Justice Minita Chico-Nazario, filed a dissenting opinion.

[14] The Report states (pp. 16-18):

> The following inconsistencies and assumptions of Macasaet prove that the alleged bribery story lacks veracity:
>
> 1. For instance, he said that he could not get confirmation of the bribery story given to him by his source. Later, he said that his sources "told me they had personal knowledge" but would not reveal the name of the Lady Justice (65 tsn Jan. 10, 2008).
>
> 2. His allegation that the Lady Justice (later identified as Justice Santiago) did not report for work "last week", *i.e.*, the week before his first columns came out on September 18, 2007, was refuted by the Court's Public Information Officer (PIO) Atty. Midas Marquez, who testified that no Lady Justice was absent that week.
>
> 3. The date when the gift-wrapped box of money was allegedly opened by Cecilia is also uncertain because of Macasaet's conflicting allegations about it. Macasaet's first column of September 18, 2007, stated that it happened "last week," *i.e.*, sometime in the week of September 10-14, 2007.
>
> The next day, September 19, 2007, he however wrote in his column that "the five boxes (not one) of money were delivered on the day (September 3, 2007) when the Lady Justice, acting as *ponente,* acquitted" the accused Henry T. Go.
>
> But again, because his story about Cecilia's role in the discovery of the bribery in September 2007, was contradicted by the record of Cecilia's resignation from the Court on March 15, 2007 (Annexes "D" and "D-1", Cecilia Delis' Letter of Resignation & Clearance), Macasaet, after consulting his "source" again, changed his story when he testified on January 17, 2008. He said that, according to his source, the boxes of money were delivered, not any one time in September 2007, but on different dates in November 2006 up to March 2007, "before Cecilia resigned or was fired from the office of Justice Santiago." (5-6 tsn Jan. 17, 2008)

That allegation is, however, refuted by the logbooks of the Security Services for the period of November 2006 to March 2007 which contain no record of the alleged deliveries of boxes of money to the office of Justice Santiago. Danilo Pablo, head of the February 1, 2008, he denied that said he that, —"I never said carnation boxes; I said milk boxes that should make a lot of difference." (84 tsn Feb. 1, 2008).

Court's Security Services affirmed that in his [sic] ten (10) years of service in the Court he has not received any report of boxes of money being delivered to any of the Justices. (45-46 tsn Jan. 22, 2008)

[4.] Which of the five (5) boxes was opened and yielded money? In his column of September 21, 2007, Macasaet alleged that Cecilia picked up the five boxes of money "several times in March" ("not last week as I mistakenly reported"), and "she never opened the first four boxes.... she opened the last and saw the money because the Lady Justice was absent on that day."

But when he testified before the Committee on January 10, 2008, Macasaet alleged that it was "the first one that was opened" according to his source (71, 89, 92, 125 tsn Jan. 10, 2008).

Contradicting his published story that five (5) boxes of money were delivered "on the day" the Lady Justice acquitted Henry Go, Macasaet testified at the investigation that they were delivered "on different occasions according to my source" (70 tsn Jan. 10, 2008).

But no sooner had he attributed that information "to my source" than he admitted that it was only "my own conclusion x x x I assumed that the giver of the money is not so stupid as to have them delivered all in one trip. As a matter of fact I even wondered why said boxes were not delivered in the home of the Lady Justice." (72 tsn Jan. 10, 2008).

[5.] The amount of the bribe is also questionable. For while in his own column of September 18, 2007 Macasaet stated that the gift was "estimated at Php 10 million", he later testified on January 10, 2008, that "the amount was my own calculation because I talked to people, I said this kind of box how much money in One Thousand Pesos bills can it hold, he told me it is ten (million). So that was a calculation" (77 tsn Jan. 10, 2008).

He also merely "assumed that the money was in one thousand peso bills (78 tsn Jan. 10, 2008). No one really knows their denomination.

He said he was told that the size of the box where the money was placed was "this milk called carnation in carton." x x x But in the final hearing on February 1, 2008 he denied [such and stated] "I never said carnation boxes. I said milk boxes[.] [T]hat should make a lot of difference" (84 tsn Feb. 1, 2008).

unbelievable,[15] and malicious[16] and (2) Macasaet was negligent

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[6.] Since only one gift-wrapped box of money was opened, Macasaet admitted that he has "no knowledge" of whether the four (4) other boxes were also opened, when and where they were opened, and by whom they were opened (90 tsn Jan. 10, 2008). Therefore, no one knows whether they also contained money.

That the five (5) boxes contained a total of ten million pesos, is just another assumption of Macasaet's. "It is a conclusion based on estimates obtained from friends and how much five boxes can hold in one thousand peso bills, more or less ten million," he explained (91 tsn Jan. 10, 2008). (Emphasis in the original)

[15] The Report states (p. 18):

In view of its tenuous underpinnings, we find the bribery story in Macasaet's columns of September 18-21, 2007, and in Ms. Vitug's *Newsbreak* issue of September 25, 2007, **unbelievable**. Why should five boxes supposedly containing a total of Php 10 million as bribe money be delivered to the office of a Lady Justice in the Supreme Court, where it would have to pass examination by the security guards and quizzical eyes of her own employees? Why not to her home? Or at some agreed meeting place outside the Court and her home? Or why not quietly deposit it in her bank account? And why was she absent from her office on the day of the presumably agreed date for the payment of the bribe? If the bribe was for dismissing the information against Henry Go in the Sandiganbayan, why was it paid prematurely in November 2006-March 2007 when the case of Henry Go was still up in the air and in fact was decided against him on April 13, 2007? The favorable resolution on his motion for reconsideration, penned by Justice Santiago, was promulgated on September 3, 2007, almost one year after the pay-off, if there was such a pay-off? (Emphasis in the original)

[16] The Report states (p. 20):

If he had no malice toward the Court, if, as he professes, the purpose of his columns was to save the integrity and honor of the Court, Macasaet should, and could, have reported the rumored bribery directly to the Chief Justice and asked for its investigation. He should have refrained from calling the Court names, before giving it a chance to act on his report and on his suggestion to investigate the matter. Since he knew the name of the Court employee who allegedly discovered the bribe money, the Court could have begun its investigation with her to ascertain the identity of the nameless Lady Justice and the veracity of the rumored bribery. His disparaging remarks about the Court and jurists in conjunction with his unverified report on the alleged bribery were totally uncalled for and unjustified.

in failing to ascertain the veracity of his story.[17] The Committee concluded that Macasaet's publications generated public distrust in the administration of justice and thus, contumacious. The majority finds the Report's findings and conclusion well-taken and accordingly imposes a punitive fine on Macasaet.

I agree with the majority that Macasaet failed to substantiate his story. However, I disagree with the majority's conclusion that this suffices to hold Macasaet guilty of contempt of court.

Preliminary Observations

On the Nature of this Proceeding

As stated, this is a proceeding to determine Macasaet's liability for criminal contempt[18] under Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.[19] Thus, its scope is narrow and its

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[17] The Report states (p. 15):

> The Committee observed that Macasaet's tory about the bribery and of Cecilia's role in supposedly discovering it, is full of holes, inconsistencies, and contradictions, indicating that he did not exercise due diligence, patience, and care in checking the veracity of the information fed to him, before giving it publicity in his columns. Nor was he bothered by the damage that his columns would inflict on the reputation of a member of the Highest Court and on the Court itself. In fact, he was "happy" that he wrote the columns (103 tsn Jan. 10, 2008). Even if he failed to get confirmation of the bribery," one day sooner or later, somebody would come up and admit or deny it. He did not care that he smeared the whole judiciary to fish her out, because "after she is fished out, the suspicion on the rest would be removed." (29-30 tsn Jan. 10, 2008).

[18] As distinguished from "civil contempt," criminal contempt is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect; it is also an offense against organized society and public. Civil contempt, on the other hand, consists in failing to do something ordered by the court in a civil action for the benefit of the opposing party (*People v. Godoy*, 312 Phil. 977 [1995]).

[19] Sec. 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed and an opportunity to respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

purpose specific: to determine, using applicable standards, whether Macasaet's publications tend to impede, obstruct, or degrade the administration of justice. Care must be taken that, in undertaking this task, we do not tread beyond the limited confines of this proceeding and enter into the larger determination of whether bribery, as defined in our criminal statutes,[20] did or did not take place to remove a member of this Court from office. The Constitution has vested such power only on Congress[21] which, upon proper complaint and after due proceedings, determines whether a member of this Court can be impeached for, among others, bribery.[22] Observance of this jurisdictional delineation has a practical consequence: this proceeding terminates either in Macasaet's citation or non-citation for indirect contempt of court depending on whether his publications are deemed contumacious.

On Whether this Case Should be Decided by the Court En Banc or by the Special Third Division in G.R. No. 172602

While there may have been confusion at the start as to which case was involved in the reported bribery,[23] it is now settled that the case is G.R. No. 172602 pending with the Special Third Division (awaiting resolution of respondent's motion for reconsideration). Hence, it is but proper and logical that the Special Third Division resolve this matter which, after all, is but an incident to G.R. No. 172602. While this Court is a collegiate court, it is no less a court of law when it sits in a division than when it sits *en banc*, to resolve judicial matters, or, as here, a

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(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

[20] Article 210, Revised Penal Code.

[21] Section 3, Article XI, Constitution.

[22] Section 2, Article XI, Constitution.

[23] In her statement dated 24 September 2007, Justice Santiago adverted to "a big land dispute in Quezon City" as the possible reason for the bribery reports. See also note 11.

contempt charge. At any rate, whether it is the Court *en banc* or the Special Third Division in G.R. No. 172602 which resolves this matter, Macasaet's conduct is not contumacious.

The Committee Proceedings were Fatally Defective

The Resolution dated 16 October 2007 created the Committee to:

> [R]eceive x x x evidence from all the parties concerned [and] x x x, on its own, call such persons who can shed light on the matter. It shall be endowed with all the powers necessary to discharge its duty.

The Committee read this Resolution as having granted it mere "fact-finding" powers.[24] **Accordingly, when the witnesses the Committee summoned testified, the Committee monopolized the right to propound questions to the witnesses, denying to Macasaet such right**.

This procedure is **fatally defective for patent denial of due process**, rendering the testimonies in question inadmissible.

A proceeding for criminal contempt, as here, is adversarial.[25] At the heart of such adversarial process is the parties' right to

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[24] The Committee chair, Justice Griño-Aquino, stated during the Committee's first hearing on 7 January 2008 (TSN, 7 January 2008, pp. 29-30):

> It is clear from the Resolution of the Court that our task is fact finding[. W]e would like, the Court is interested to know the facts supporting what it refers to as the innuendos which are derogatory and degrading to the reputation of the Court itself, x x x. So, that is why the Supreme Court is interested to know the facts x x x.
>
> Although in the hearing of 7 January 2008, Committee member Justice Vitug stated that "the Committee x x x would not be in a position to make any pre-judgment x x x on the scope of its authority but x x x shall act in accordance with what it believes to be the mandate of the Court" (TSN, 7 January 2008, p. 28), he later stated in the subsequent hearing of 24 January 2008 that "we are here only to make some findings and that's it x x x" (TSN, 24 January 2008, p. 90).

[25] See *Soriano v. Court of Appeals* (G.R. No. 128938, 4 June 2004, 431 SCRA 1, 7-8) where we held that "[t]he modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal proceedings."

test the veracity of the testimonies of adverse witnesses through cross-examination. With the procedure the Committee adopted, Macasaet was reduced to a passive participant, unable to subject the testimonies of adverse witnesses to rigorous probing under cross-examination. As matters stand, Macasaet will be subjected to punitive sanctions based on evidence he had no opportunity to scrutinize.

True, the Committee solicited the views of the parties, and the counsels for the *Newsbreak* staff[26] and Delis[27] agreed with the Committee's characterization of the proceedings as mere fact-finding.[28] However, this acquiescence is no more binding on the Court than the Committee's view. It is an erroneous conclusion of law which cannot transform the nature of a contempt proceeding from adversarial to non-adversarial.

Nor can it be said, as the *ponencia* holds, that Macasaet waived his right to conduct cross-examination for his failure to "timely assert" such right. This conclusion erroneously presupposes that Macasaet should have asserted such right at that point. The Committee stated at the outset that its investigation was merely "fact-finding," making Macasaet believe that there would be another occasion for a cross-examination of the witnesses. Thus, Macasaet did not insist on his right to cross-examine at that point. Having been denied the right to cross-examine from the start, there was nothing which Macasaet could have "timely asserted."

The Applicable Standard in Contempt-by-Publication Proceedings

At any rate, the evidence at hand fails to meet the applicable standard in contempt-by-publication proceedings.

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[26] Atty. Fulgencio Factoran.

[27] Atty. Ricardo Pamintuan.

[28] TSN, 7 January 2008, pp. 15, 27. The counsel for Macasaet did not make any manifestation.

This matter comes on the heels of a small but growing line of jurisprudence on contempt-by-publication;[29] however, this is only the second incident to involve this Court on reports of corruption.[30] These cases implicate two competing but equally vital State interests: on the one hand, the right of journalists to be protected from contempt of court under the constitutional guarantees of free speech and of the press and, on the other hand, the right of the courts to maintain order, impartiality and dignity in the administration of justice. In resolving the matter, we are called upon to perform a task more commonly done in constitutional adjudication — the balancing of constitutional values using applicable standards. As ever, the result of this delicate task hinges on the liberality or stringency of the test used against which the two interests are weighed.

In concluding that "there exist valid grounds x x x to cite x x x Macasaet for indirect contempt x x x," the Report implicitly used two parameters, first applied in *In Re: Emil P. Jurado*[31] (*Jurado* test), against which Macasaet's publications were measured: (1) whether Macasaet's story was false and (2) whether Macasaet could have prevented the publication of the false story by exercising diligence in verifying its veracity.[32] As stated, the Report found Macasaet's publications wanting on both counts.

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[29] For publications by journlists, see *In re Lozano and Quevedo*, 54 Phil. 801 (1930); *In re Abistado*, 57 Phil. 669 (1932); *In Re Brillantes*, 42 O.G. 59 (1945); *Murillo v. Superable*, 107 Phil. 322 (1960); *People v. Castelo*, No. L-11816, 23 April 1962, 4 SCRA 947. For publications of letters written, or interviews given, by citizens, see *In re Kelly*, 35 Phil. 944 (1916); *People v. Alarcon*, 69 Phil. 265 (1939); *In re Sotto*, 82 Phil. 595 (1949); *Zaldivar v. Gonzalez*, Nos. 79690-707, 7 October 1988, 166 SCRA 316.

[30] The first is *In Re: Emil P. Jurado*, 313 Phil. 119 (1995).

[31] *Id.*

[32] While *Jurado* also mentioned other "postulates" to resolve the contempt charge in that case (namely, whether the publication is violative of the Philippine Journalist Code of Ethics and offensive to the dignity and reputation of a Court or a judge presiding over it), the Report made no mention of these "postulates." However, the Report did refer to *Newsbreak*'s Guide to Ethical Journalistic Conduct which Macasaet allegedly "violated" for making several false assumptions.

However, long before we adopted the *Jurado* test, this Court already laid down the two "theoretical formulas" to serve as the judicial scales upon which the competing interests in this proceeding are weighed. We held in *Cabansag v. Fernandez*:[33]

Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. These are the [1] "clear and present danger" rule and the [2] "dangerous tendency" rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

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Thus, speaking of the extent and scope of the application of [the first] rule, the Supreme Court of the United States said **"Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high**. . . . A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice.["] x x x

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The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where

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[33] 102 Phil. 152, 161-164 (1957).

the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt (*Gilbert vs. Minnesota*, 254 U. S. 325.)

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. **It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms**. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (*Gitlow vs. New York*, 268 U.S. 652.)

Thus, in this jurisdiction, we have long ago applied the clear and present danger test in contempt cases.[34] We must scrutinize Macasaet's publications through the lens of the clear and present danger test guided by these queries: (1) is the evil consequence of Macasaet's publications extremely serious? and (2) is the degree of its imminence extremely high? The facts of this case do not meet either criterion.

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[34] See *Cabansag v. Fernandez supra* note 33 and *People v. Godoy*, 312 Phil. 977 (1995). This is also the prevailing test in the U.S. jurisdiction in contempt-by-publication cases (see *Pennekamp v. State of Florida*, 328 U.S. 331 [1946]; *Craig v. Harney*, 331 U.S. 367 [1947]; *Bridges v. California*, 314 U.S. 252 [1941]). For a discussion on the evolution of this test in that jurisdiction as used in contempt-by-publication cases, see *Turkington v. Municipal Court*, 85 Cal. App.2d 631, 193 P.2d 795 (1948). In this jurisdiction, the test has likewise been used to determine the constitutionality of regulations and official pronouncements amounting to censorship (*e.g. Iglesia ni Cristo (INC) v. Court of Appeals*, G.R. No. 119673, 26 July 1996, 259 SCRA 529; *Chavez v. Gonzalez*, G.R. No. 168338, 15 February 2008). As used in First Amendment cases in the U.S. jurisdiction, this test has been refined under the Brandenburg standard in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (see separate and concurring Opinion, Carpio, *J.* in *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008).

Although the majority, in adopting the Report's findings, did not expressly so state, it appears that the substantive evil allegedly brought about by Macasaet's publications is two-fold: (1) disrespect for the Court and (2) unfair administration of justice. To determine to what extent the substantive evil is likely to occur, we must turn to the particular utterances and the circumstances of their publication.[35] On the question of disrespect for the Court, the Report seemed to have cherry-picked words from Macasaet's publications describing the Court's reputation ("sagging" and "soiled"), the state of the courts ("dirty"), and the public's appraisal of judges ("thieves") and separated them from their context to arrive at its conclusion. Adopting the same approach, the majority holds that "[Macasaet] has absolutely no basis to call the Supreme Court a court of 'thieves' and a 'basket of rotten apples.'"[36]

A simple resort to the publications in question belies these findings. Macasaet used these terms to bring home his point that (1) the alleged bribery "proves" the less than a desirable state of affairs in the judiciary (that is, the courts are "dirty"); (2) which reflects on the entire judiciary (similar to a basket of apples where, if "there are a few which are rotten[;] [t]hat makes the whole basket rotten"); and (3) that the Court must investigate the reported bribery with Delis' aid to save the other members of the Court from "suspicions they are thieves."[37] Thus, taken in context of their actual use as they appeared in Macasaet's publications, the words the majority finds contumacious are no more disrespectful of courts than when a publication states that a reported pay-off "proves" that the judiciary is populated by "hoodlums in robes."[38]

On Macasaet's statement that the Justice in question "shamed her court" and that she should resign or be impeached, it needs

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[35] *Bridges v. California*, 314 U.S. 252, 271 (1941).

[36] Majority Opinion, p. 39.

[37] See note 4.

[38] A term, made popular by a former Chief Executive, which has gained currency in public discourse on corruption in the judiciary.

no further elaboration that this statement is not directed at the Court but at one of its members. Without passing judgment on the nature of this statement, it is obvious that the remedy for any injury this may have caused lies not in this Court's exercise of its contempt power but in the resort by the Justice concerned to remedies available under our civil and criminal statutes to vindicate her rights.[39]

On the question of unfair administration of justice, neither has it been claimed nor suggested that this matter has or will adversely affect the disposition of the pending incident in G.R. No. 172602. If there is any party which stands to be directly prejudiced by the alleged bribery, it is the government whose case against Go was ordered dismissed in the Resolution of 3 September 2007. However, the government has not asked for Justice Santiago's inhibition from that case, indicating its continuing trust and confidence in her impartiality. With this backdrop, the Report's conclusion that Macasaet's publications "generate[d] public distrust in the administration of justice" and wrought "damage and injury" to the "institutional integrity, dignity, and honor"[40] of this Court rings hollow, rooted on assumptions bereft of factual basis. As well observed by then Associate Justice, now Chief Justice Reynato S. Puno, in *Jurado* which also involved a journalist who authored false reports of corruption in the Court:

> There is nothing in the record, however, showing the degree how respondent's false report degraded the administration of justice. The evidence from which this conclusion can be deduced is nil. The standing of respondent as a journalist is not shown. The extent of readership of respondent is not known. His credibility has not been proved. Indeed, nothing in the record shows that any person lost faith in our system of justice because of his said report. **Even the losing party** x x x **does not appear to have given any credence to the said false report**.[41] (Emphasis supplied)

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[39] Significantly, in her statement dated 24 September 2007, Justice Santiago reserved "her right to file the appropriate criminal charges."

[40] Report, p. 19.

[41] *In Re: Emil P. Jurado supra* note 30.

These observations are consistent with the rule that the clear and present danger test is deemed met only upon showing that "the material would tend to cause the unfair disposition of pending cases"[42] or create an imminent and serious threat to the ability of the Court to decide the issues before it.[43] In sum, the facts of this case fall short of the stringent standard under the clear and present danger test that the substantive evil brought about by the publications be **extremely serious** and the degree of imminence **extremely high**.[44]

The clear and present danger test, which this Court has been applying in contempt cases,[45] is most protective of free speech and of free press, basic rights which are necessary for the exercise of almost every other fundamental right.[46] That this case is **a criminal contempt proceeding** gives added protection to Macasaet who invokes freedom of the press. Indeed, Macasaet is afforded the basic rights granted to the accused[47] in a criminal case and as precondition for citing him in contempt, **intent to commit contempt of court must be shown by proof beyond reasonable doubt**. Good faith or absence of intent to harm the courts is a valid defense.[48] Macasaet

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[42] 40 A.L.R.3d 1204.

[43] See *Pennekamp v. State of Florida*, 328 U.S. 331 (1946); *Craig v. Harney*, 331 U.S. 367 (1947); *Bridges v. California*, 314 U.S. 252 (1941).

[44] *Bridges v. California*, 314 U.S. 252, 263 (1941).

[45] See *Cabansag v. Fernandez supra* note 33; *People v. Godoy*, 312 Phil. 977 (1995).

[46] *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills*, No. L-31195, 5 June 1973, 51 SCRA 189 (1973). For an extensive discussion of the vital role of free expression in a democratic society, see *Chavez v. Gonzalez*, G.R. No. 168338, 15 February 2008, Carpio, *J*., concurring.

[47] Such as the presumption of innocence and the requirement of proof beyond reasonable doubt (*People v. Godoy*, 312 Phil. 977 [1995]).

[48] *People v. Godoy*, 312 Phil. 977 (1995).

did invoke good faith but the Report brushed it aside as "tongue in cheek protestation[]."[49]

The clear and present danger test is the most exacting and protective test in favor of free press. Before a journalist can be punished in a **criminal** contempt case, as in this case, there must be proof beyond reasonable doubt that his publication tends to obstruct the administration of justice, and **such obstruction must be extremely serious, likely resulting in an unfair decision, and the degree of imminence of the obstruction actually happening extremely high**.

Macasaet and *Newsbreak* based their reports on the alleged bribery from information obtained from their respective confidential sources. In short, it was a professional call on the part of Macasaet and *Newsbreak* to run the story. This Court should be the last to attribute negative motives for this judgment

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[49] The Report states (p. 19):

> Macasaet's diatribes against the Court generates public distrust in the administration of justice by the Supreme Court, instead of promoting respect for its integrity and honor. They derogate his avowal of "highest respect for this Court" (100 tsn Jan. 10, 2008); his declaration that he has "always upheld the majesty of the law as interpreted by the Court" (96 tsn Jan. 10, 2008); that his opinion of the Court has actually been "elevated ten miles up" because of its decisions in the cases involving Proclamation No. 1017, the CPR, EO 464, and the People's Initiative (97 tsn Jan. 10, 2008); that he has "done everything to preserve the integrity and majesty of the Court and its jurists" (84-85 tsn Feb. 1, 2008); that he wants "the integrity of the Court preserved because this is the last bastion of democracy" (32 tsn Jan. 10, 2008).
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> These **tongue-in-cheek protestations** do not repair or erase the damage and injury that his contemptuous remarks about the Court and the Justices have wrought upon the institutional integrity, dignity, and honor of the Supreme Court. As a matter of fact nowhere in his columns do we find a single word of respect for the Court or the integrity and honor of the Court. On the contrary, what we find are allegations of "pernicious rumor that the courts are dirty", suspicious that the jurists are "thieves"; that the Highest Court has a "soiled reputation", and that the Supreme Court has a "sagging reputation". (Emphasis supplied)

This finding loses sight of the import of *Newsbreak*'s publication which, while substantially echoing Macasaet's, was indisputably based on information gathered from its own independent sources.

call.[50] Admittedly, Macasaet has failed to substantiate his story — spread over four issues of *Malaya*, divulging bits and pieces of vague information. This, however, does not serve to lessen the protection afforded to the publications which carried them under the constitutional guarantees of free speech and of free press. Journalists, "agents of the people"[51] who play a vital role in our polity by bringing to the public fora issues of common concern such as corruption, must be accorded the same "breathing space" for erroneous statements necessary for free expression to thrive in a democratic society.[52]

Further, failure to substantiate a story, or even the mere falsity of publications, had long ceased to suffice to hold journalists in contempt of court (unless there is a clear and present danger that such false reports will impair the administration of justice)[53]

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[50] Just as this Court should not tell Macasaet on what proper course of action to take *vis-a-vis* the confidential information he received or worse, categorize his decision to print the story as proof of malice as the Report does (Report, p. 20). To do so is to come dangerously close to telling journalists how to do their work, a function this Court is least qualified to undertake outside of its adjudicatory role.

[51] *In Re: Emil P. Jurado supra* note 30 at 367, Puno, *J.*, dissenting.

[52] See *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964).

[53] *Pennekamp v. State of Florida*, 328 U.S. 331 (1946). The rule is stated thus: "If a person, by false charges against a court, does directly interfere with the administration of justice he may be punished for a constructive contempt, and the constitutional guarantee will not protect him. But before he can be so punished the false charges must be of such a nature that they not only have a 'reasonable tendency' to obstruct justice, but also must constitute 'a clear and present danger' to the administration of justice. Intemperate language, **false charges**, and unfair criticism, **no matter how strongly expressed, may be in bad taste, but they do not constitute a constructive contempt unless there is an immediate, clear and present danger imperiling the administration of justice**." (*Turkington v. Municipal Court*, 193 P.2d 795, 802 [1948]; emphasis supplied). Of course, it does not follow that erring journalists and their publishers should not earn the public's ire for sloppy journalistic work. As a jurist in another jurisdiction well observed:

> One can have no respect for a newspaper which is careless with facts and with insinuations founded in its carelessness. Such a disregard for the truth not only flouts standards of journalistic activity observed too often by breach, but in fact tends to bring the courts and those who administer them into undeserved public obloquy.

just as it had long ceased to suffice to hold journalists liable for libel for criticism of public officials under the actual malice standard.[54] Chief Justice Puno's discussion of this point in *Jurado* is most illuminating:

> **[R]espondent [is punished] for publishing "stories shown to be false . . . stories that he made no effort whatsoever to verify and which, after being denounced as lies, he has refused, or is unable to substantiate." The undue weight given to the falsity alone of respondent's columns is unsettling. For after finding respondent's columns as false, the majority did not go any further to determine whether these falsehoods constitute a clear and present danger to the administration of justice.**
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> [T]he majority cites in support of its non-too-liberal stance the cases of *New York Times Co. v. Sullivan* and *Garrison v. Louisiana*. These cases, however, are ground breaking in importance for they

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> But if every newspaper which prints critical comment about courts without justifiable basis in fact, or withholds the full truth in reporting their proceedings or decisions, or goes even further and misstates what they have done, were subject on these accounts to punishment for contempt, there would be few not frequently involved in such proceedings. There is perhaps no area of news more inaccurately reported factually, on the whole, though with some notable exceptions, than legal news.
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> Courts and judges therefore cannot be put altogether beyond the reach of misrepresentation and misstatement. x x x The question, and the standard, must be one of degree and effects. It cannot be placed at mere falsity, either in representation or in judgment. The statement, whether of fact or of opinion, must be of such a character, whether true or false, as to obstruct in some clear and substantial way the functioning of the judicial process in pending matters. It is not enough that the judge's sensibilities are affected or that in some way he is brought generally into obloquy. After all, it is to be remembered that it is judges who apply the law of contempt, and the offender is their critic. (*Pennekamp v. State of Florida*, 328 U.S. 331, 370-372 (1946), Rutledge, *J*., concurring; citations omitted).

[54] As held in *New York Times v. Sullivan* (376 U.S. 254 [1964]), the actual malice standard is met upon proof of knowledge that the publication was false or with reckless disregard of whether the publication was false or not.

expanded the protection given to freedom of speech and of the press. *New York Times* restricted the award of damages in favor of public officials in civil suits for damages arising out of libel precisely because of their chilling effects on the exercise of freedom of speech and of the press. **To be entitled to damages, the public official concerned was imposed a very difficult, if not impossible, burden of proof. He was required to prove that the defamatory statement was not only false but was made with "actual malice." This means he has to prove that the defamatory statement was made with the "knowing falsity or with a reckless disregard for the truth."** On the other hand, *Garrison* did not only reiterate but even extended the *New York Times* rule to apply to criminal cases. x x x

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The majority opinion in the case at bench certainly did not follow the *New York Times* rule which was reiterated and even expanded in Garrison. The majority halted after finding that the respondent's columns are false or slanted.[55] (Boldfacing supplied)

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[55] *In Re: Emil P. Jurado supra* note 30 a*t* 362-365. The ponencia sought to blunt the impact of Chief Justice Puno's observation by differentiating *Jurado* from this case, thus (Majority Opinion, p. 43):

"The critical issues [in *Jurado*] were the right of newsmen to refuse subpoenas, summons, or 'invitations' to appear in administrative investigations, and not to reveal their confidential sources of information under R.A. No. 53, as amended. None of these are the issues at hand."

A perfunctory scanning of *Jurado* reveals exactly the opposite and that, as in this case, the newsman in *Jurado* was cited for contempt for publishing false stories the veracity of which he failed to confirm, thus (*id.*, note 30 at 188-189):

The Actual Issue

The issue therefore **had nothing to do with any failure of Jurado's to obey a subpoena, none ever having been issued to him**, and the *Ad Hoc* Committee having foreborne to take any action at all as regards his failure to accept its invitations. The issue, as set out in the opening sentence of this opinion, essentially concerns "(l)iability for published statements demonstrably false or misleading, and derogatory of the courts and individual judges."

Jurado is not being called to account for declining to identify the sources of his news stories, or for refusing to appear and give testimony before the *Ad Hoc* Committee. He is not being compelled to guarantee the truth of what he publishes, but to exercise honest and reasonable efforts to determine the truth of defamatory statements before publishing them. **He is**

To support its conclusion finding Macasaet guilty of contempt of this Court, the majority made a selective survey of contempt of court jurisprudence and sought to apply them here. However, of the cases the majority cites, only three involved contempt by publication proceedings, two of which, *In re Kelly*[56] and *In re Sotto* [57] were decided long before we laid down the parameters of the clear and present danger test in *Cabansag*.[58] As for the third case of *People v. Godoy*,[59] the Court in fact applied the clear and present danger test in that case, thus:

> Snide remarks or sarcastic innuendoes do not necessarily assume that level of contumely which is actionable under Rule 71 of the Rules of Court. Neither do we believe that the publication in question was intended to influence this Court for it could not conceivably be capable of doing so. The article has not transcended the legal limits for editorial comment and criticism. Besides, **it has not been shown that there exists a substantive evil which is extremely serious and that the degree of its imminence is so exceptionally high as to warrant punishment for contempt and sufficient to disregard the constitutional guaranties of free speech and press**. (Emphasis supplied)

Thus, while ostensibly using relevant jurisprudence to arrive at its conclusion, the majority actually relied on the liberal parameters of the "falsity and negligence test" used in *Jurado.* The "falsity and negligence test" is a sharp dagger aimed at the

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being meted the punishment appropriate to the publication of stories shown to be false and defamatory of the judiciary — stories that he made no effort whatsoever to verify and which, after being denounced as lies, he has refused, or is unable, to substantiate. (Emphasis supplied)

[56] 35 Phil. 944 (1916).

[57] 82 Phil. 595 (1949).

[58] The *ponencia* dwelt at length on the cases of *In Re Laureta* (G.R. No. 68635, 12 March 1987, 148 SCRA 382) and *Roxas v. Zuazuarregui* (G.R. No. 152072, 12 July 2007, 527 SCRA 446) where we cited in contempt of court parties and their counsel for writing letters to members of this Court tending to impair and degrade the administration of justice. These cases are not controlling as none of the respondents was a journalist who was sought to be punished for authoring publications critical of the Court.

[59] 312 Phil. 977, 997 (1995).

heart of free speech and of free press. Applied for the first time in *Jurado* and nowhere else on this planet, this test does not consider the seriousness or imminence of the substantive evil sought to be prevented. Any kind of unflattering publication to a judge or court, whether or not putting at risk a fair trial or decision, becomes punishable for contempt if false and the journalist could have prevented the publication by exercising diligence to verify its veracity. Good faith is not a defense.

The "falsity and negligence test" compels the journalist to guarantee the veracity of what he writes on pain of criminal contempt of court. Obviously, this has a chilling effect on free speech and free press. This will lead to self-censorship, suppressing the publication of not only what is false but also of what is true. Critics of judges or the courts will be forced into silence, unless they are willing to face imprisonment or fine for criminal contempt. The "falsity and negligence test" is a dangerous throwback to the Dark Ages in the history of free speech and of free press.

By approving the Report's reliance on the *Jurado* test, the majority perpetuates a double-standard *vis-a-vis* publications critical of public officials. On the one hand, the majority applies the liberal "falsity and negligence test" in lieu of the exacting clear and present danger test to scrutinize publications critical of judges in contempt cases, and on the other hand, applies the stringent "actual malice test" for publications critical of all other public officials.

This Court has extended the constitutional protection of free speech to publications critical of a *barangay* official,[60] provincial governor (and concurrently a cabinet official),[61] and other public figures,[62] for lack of proof of knowledge that the publication

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[60] *Vasquez v. Court of Appeals*, 373 Phil. 238 (1999).

[61] *Flor v. People*, G.R. No. 139987, 31 March 2005, 454 SCRA 440.

[62] "A civil engineer, businessman, business consultant and journalist" (*Borjal v. Court of Appeals*, 361 Phil. 1 [1999]) and a "broadcast journalist" (*Guinguing v. Court of Appeals*, G.R. No. 128959, 30 September 2005, 471 SCRA 196).

was false or of reckless disregard of whether the publication was false or not. However, the Court today is imposing punitive sanctions on a journalist for authoring publications imputing malfeasance on a member of the Court because the journalist failed to substantiate his story, despite incontrovertible proof that he acted in good faith as shown by the parallel publication of the same story by another media outlet based on its own confidential sources (which, significantly, was never made to justify its conduct).

Supreme Court Justices, as public officials, and the Supreme Court, as an institution, are entitled to no greater immunity from criticism than other public officials and institutions.[63] Indeed, the dual-treatment that the majority tolerates turns on its head the purpose of the contempt power: instead of "protect[ing] immediate litigants and the public from the mischievous danger of an unfree or coerced tribunal" it "protects the court as a mystical entity or the judges x x x as anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed."[64] As the Highest Court of the land, the Court should be the first to resist the temptation to privilege its members with the shield of *lese-majeste*, through the liberal "falsity and negligence test," at the expense of diluting the essence of the free press guarantee indispensable in a democratic society. This Court diminishes itself if it diminishes the free press guarantee, for an independent judiciary needs a free press as much as a free press needs an independent judiciary.[65]

Courts must, as a matter of self-preservation, be able to defend themselves. But it is not against **all** attacks that they can employ

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[63] See *Bridges v. California*, 314 U.S. 252, 271, 289 (1941), Frankfurter, *J.*, dissenting.

[64] *Id.* at 292.

[65] A ruling well elucidates the interdependence between the press and the judiciary: "The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. **And one of the potent means for assuring judges their independence is a free press**." (*Pennekamp v. State of Florida*, 328 U.S. 331, 335 [1946], Frankfurter, *J.*, concurring; emphasis supplied).

the preservative[66] power of contempt. As this Court recognized more than half a century ago in *Cabansag*, it is only when the evil brought about by the attack is "extremely serious and the degree of imminence extremely high" so as to impede, obstruct, or degrade the administration of justice that courts must act. To apply this exacting test is not to deny a right inherent in courts but to recognize their place in a free society always accountable to the public whom they serve and for whom they exist. More than a decade ago, this Court was given the chance in *Jurado*, as the Court is again now, of applying to itself this rigorous test to an unsubstantiated publication imputing corruption to a member of this Court. The eloquent words of Chief Justice Puno explaining why a step towards such a direction serves the cause of press freedom and good government remain true today as they did then:

> [I]t is not every falsehood that should incur the Court's ire, lest it runs out of righteous indignation. **Indeed, gross falsehoods, vicious lies,** and prevarications **of paid hacks cannot deceive the public any more than can they cause this Court to crumble. If we adopt the dangerous rule that we should curtail speech to stop every falsehood we might as well abolish freedom of speech for there is yet to come a man whose tongue tells only the truth**. In any event, we should take comfort in the thought that falsehoods cannot destroy — only truth does but only to set us free.
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> **[T]he columns of respondent dealt with the sensitive subject of corruption in courts. It cannot be gainsaid that corruption in government is a matter of highest concern to our citizenry**. Yet it is a problem that defies solution primarily because it is a subject where people in the know maintain the countenance of a claim. Thus, the prosecution of corruption in government has not hit a high note and that what now appears as the most effective restraint against corruption in government is the fear of the light of print. If the light of print continues to be a strong deterrent against government

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[66] As distinguished from vindictive. The contempt power ought not to be utilized for the purpose of merely satisfying what is admittedly a natural inclination to strike back at a party who had shown less than full respect for the dignity of the Court (*Royeca v. Animas*, 162 Phil. 851, 858 (1976).

misdeeds, it is mainly because newsmen have an unimpeded access to information. On many an occasion, these confidential sources of information are the only leads to government malfeasance. To fashion a rule derogatory of the confidentiality of newsmen's sources will result in tremendous loss in the flow of this rare and valuable information to the press and will prejudice the State's policy to eliminate corruption in government. **In the absence of clear and convincing evidence that respondent knowingly foisted a falsehood to degrade our administration of justice, we should be slow in citing him for contempt.** The *New York Times* rule correctly warned us that occasional erroneous statements are "inevitable in free debate . . . and must be protected if the freedoms of expression are to have the 'breathing space' that they 'need, to survive.'"

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[T]he abuses of some newsmen cannot justify an overarching rule eroding the freedom of all of them. Indeed, the framers of the Constitution knew that these abuses will be committed by some newsmen but still, they explicitly crafted Section 4, Article III of the Constitution to read: "[No law shall be passed abridging the freedom of speech, of expression, or of the press . . . " Madison stressed that "some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press." There is an appropriate remedy against abusive newsmen. I submit, however, that the remedy is not to be too quick in wielding the power of contempt for that will certainly chain the hands of many newsmen. Abusive newsmen are bad but laundered news is worse.

x x x x x x x x x

[T]he Constitution did not conceive the press to act as the cheer leader of government, including the judiciary. Rather, the press is the agent of the people when it gathers news, especially news derogatory to those who hold the reins of government. The agency is necessary because the people must have all available information before they exercise their sovereign judgment. As well observed: "The newspapers, magazines, and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrument of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity

afforded by a free press cannot be regarded otherwise than with grave concern." As agent of the people, the most important function of the press in a free society is to inform and it cannot inform if it is uninformed. **We should be wary when the independent sources of information of the press dry up, for then the press will end up printing "praise" releases and that is no way for the people to know the truth**.[67] (Emphasis supplied)

Accordingly, I vote **NOT** to hold Macasaet in contempt of court.

SECOND DIVISION

[A.C. No. 6567. August 11, 2008]

JOSE C. SABERON, *complainant, vs.* **ATTY. FERNANDO T. LARONG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE COURT'S RULING THAT THE ASCRIPTION OF "BLACKMAIL" IN THE ANSWER WAS NOT LEGITIMATELY RELATED OR PERTINENT TO THE SUBJECT MATTERS OF INQUIRY BEFORE THE BANGKO SENTRAL NG PILIPINAS (BSP) STANDS WHETHER THE STATEMENTS ARE IN THE NATURE OF A COUNTER-COMPLAINT OR A COUNTERCLAIM EMBODIED IN THE ANSWER AS RESPONDENT PRESENTLY MAINTAINS.— Respondent's submission that the Answer containing the allegations of blackmail is protected by the mantle of absolute privilege was already pleaded in his Comment to Petition for Review that the allegations were absolutely privileged, like allegations made in any complaint or initiatory pleading. There, he also proffered, as he now maintains in his motion, the relevancy or pertinency

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[67] *In Re: Emil P. Jurado supra* note 30 at 366-368.

of the questioned statements to the issues being litigated before the *BSP*. To respondent's contentions, the Court ruled that the ascription of "blackmail" in the Answer was not legitimately related or pertinent to the subject matters of inquiry before the *BSP,* which were the alleged alien citizenship and majority stockholding of Alfredo Tan Bonpin in the Surigaonon Rural Bank. And it reminded respondent that lawyers, though allowed latitude in making a remark or comment in their pleadings, should not trench beyond the bounds of relevancy and propriety. This Court's ruling stands whether the statements are in the nature of a counter-complaint or a counterclaim embodied in the Answer as respondent presently maintains.

2. ID.; ID.; RESPONDENT'S INVOCATION OF THE RULE ON PRIVILEGED COMMUNICATION IS MISPLACED; THE DEFENSE IS PECULIAR TO THE CRIMINAL CASE FOR LIBEL THAT RESPONDENT FACES WHICH DEPENDS ON A TOTALLY DIFFERENT AND EVIDENTLY HIGHER QUANTUM OF EVIDENCE.— Respondent's invocation of the rule of privileged communication in the present administrative matter is misplaced. It behooves to state that this defense is peculiar to the criminal case for libel that respondent faces, which depends on a totally different and evidently higher quantum of evidence than is required in this administrative case. Needless to say, this Court's ruling as to the administrative liability of respondent is not conclusive of his guilt or innocence in the libel case.

APPEARANCES OF COUNSEL

Castro Castro & Associates for complainant.
Reserva & Filoteo Law Office for respondent.

R E S O L U T I O N

CARPIO MORALES, *J.*:

From this Court's Decision[1] of April 16, 2008, both complainant Jose C. Saberon and respondent Atty. Fernando T. Larong seek reconsideration.

[1] *Rollo*, pp. 283-293.

Complainant's Motion for Reconsideration[2] asks this Court to hold respondent guilty of gross misconduct, instead of simple misconduct, for ascribing blackmail to him in pleadings filed before the *Bangko Sentral ng Pilipinas* (*BSP*).

Respondent's Motion for Reconsideration,[3] while it takes no exception to the ₱2,000 fine imposed on him and which he has paid,[4] seeks this Court to declare that the questioned allegations that the case before the *BSP* was part of blackmailing suits against his clients for financial gain - albeit couched in intemperate language — were privileged communication.

As to complainant's Motion, his arguments therein were amply discussed and ruled upon in the Decision sought to be reconsidered. The Court thus finds no ground to set the Decision aside.

On the other hand, respondent's submission that the Answer containing the allegations of blackmail is protected by the mantle of absolute privilege was already pleaded in his Comment to Petition for Review[5] that the allegations were absolutely privileged, like allegations made in any complaint or initiatory pleading.[6] There, he also proffered, as he now maintains in his motion, the relevancy or pertinency of the questioned statements to the issues being litigated before the *BSP*.

To respondent's contentions, the Court ruled that the ascription of "blackmail" in the Answer was not legitimately related or pertinent to the subject matters of inquiry before the *BSP*, which were the alleged alien citizenship and majority stockholding of Alfredo Tan Bonpin in the Surigaonon Rural Bank. And it reminded respondent that lawyers, though allowed latitude in

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[2] *Id*. at 313-324.

[3] *Id*. at 296-309.

[4] *Id*. at 310. A photocopy of a postal money order for ₱2,000 payable to the Supreme Court was attached to respondent's Motion for Reconsideration to show compliance with the Court's order for the payment of the fine.

[5] *Id*. at 234-241.

[6] *Id*. at 236.

making a remark or comment in their pleadings, should not trench beyond the bounds of relevancy and propriety.

This Court's ruling stands whether the statements are in the nature of a counter-complaint or a counterclaim embodied in the Answer as respondent presently maintains.

Respondent alternatively contends that the questioned allegations fall within the ambit of a conditionally or qualifiedly privileged communication under Article 354 (1)[7] of the Revised Penal Code. He submits that the statements, while opening up a lawyer to possible administrative sanction for the use of intemperate language under the Canons of Professional Responsibility, should not strip the pleadings in which they made their privileged nature.

Respondent's invocation of the rule of privileged communication in the present administrative matter is misplaced. It behooves to state that this defense is peculiar to the criminal case for libel that respondent faces, which depends on a totally different and evidently higher quantum of evidence than is required in this administrative case. Needless to say, this Court's ruling as to the administrative liability of respondent is not conclusive of his guilt or innocence in the libel case.

WHEREFORE, complainant's and respondent's respective Motions for Reconsideration are *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

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[7] Art. 354(1) of the Revised Penal Code reads:

Art. 354. *Requirement of publicity*. — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; x x x.

[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

SECOND DIVISION

[A.C. No. 7828. August 11, 2008]

JUDGE ALDEN V. CERVANTES, *complainant, vs.* **ATTY. JUDE JOSUE L. SABIO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CHARGES AGAINST A COURT OFFICIAL OR EMPLOYEE OR A LAWYER SHOULD BE FOUNDED ON SUBSTANTIAL AND COMPETENT EVIDENCE DERIVED FROM DIRECT KNOWLEDGE, NOT ON MERE ALLEGATIONS, CONJECTURES, SUPPOSITIONS, OR ON THE BASIS OF HEARSAY.— The Court finds the action taken by the IBP Board of Governors well taken. Respondent ought to be aware that if a court official or employee or a lawyer is to be disciplined, the evidence against him should be substantial, competent and derived from direct knowledge, not on mere allegations, conjectures, suppositions, or on the basis of hearsay. No doubt, it is this Court's duty to investigate the truth behind charges against judges and lawyers. But it is also its duty to shield them from unfounded suits which are intended to, among other things, harass them.

D E C I S I O N

CARPIO MORALES, *J.*:

Judge Alden V. Cervantes (complainant) was the presiding judge of the Municipal Trial Court (MTC) of Cabuyao, Laguna until his optional retirement on November 23, 2005. Some of the cases lodged in his sala were ejectment cases filed by Extra-Ordinary Development Corporation (EDC) against the clients of Atty. Jude Josue L. Sabio (respondent). It appears that respondent had filed motions for inhibition of complainant "on the basis of the fact that EDC gave him a house and lot putting into serious doubt his impartiality, independence and integrity." The motions were denied.

After the retirement of complainant, respondent, by Affidavit-Complaint dated April 6, 2006,[1] sought the investigation of complainant for bribery.

In support of the charge, respondent submitted a *Sinumpaang Salaysay* dated March 6, 2006 of Edwin P. Cardeño,[2] a utility worker in the MTC of Cabuyao, stating that, *inter alia,* orders and decisions of complainant were not generated from the typewriter of the court but from a computer which the court did not have, it having acquired one only on May 2, 2005; that there had been many times that a certain Alex of EDC would go to the court bearing certain papers for the signature of complainant; that he came to learn that a consideration of ₱500.00 would be given for every order or decision released by complainant in favor of EDC; and that he also came to know that attempts at postponing the hearings of the complaints filed by EDC were thwarted by complainant as he wanted to expedite the disposition thereof.

By Resolution of August 30, 2006,[3] this Court, after noting the July 20, 2006 Memorandum of the Office of the Court Administrator (OCA) relative to respondent's complaint against complainant, approved the recommendation of the OCA to dismiss the complaint for lack of merit, "the complaint being unsubstantiated and motivated by plain unfounded suspicion, and for having been filed after the effectivity of his optional retirement" (underscoring supplied).

Thus, spawned the present verified December 18, 1996 letter-complaint[4] of complainant against respondent, for disbarment.

The complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

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[1] *Rollo,* pp. 12-13.

[2] *Id*. at 15-15a; Edwin P. Cardeño was, in A.M. No. P-05-2021, June 30, 2005, "*Judge Alden V. Cervantes v. Edwin Cardeño*" (426 SCRA, 324-332), found guilty of misconduct.

[3] *Id.* at 16.

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

From the Report and Recommendation[5] of the IBP Investigating Commissioner, Randall C. Tabayoyong, it is gathered that despite the January 12, 2007 Order for respondent to file an answer to the complaint, he failed to do so, prompting the Commissioner to declare him in default.

It is further gathered that after the conduct by the Investigating Commissioner of a mandatory conference on May 25, 2007, the parties were ordered to file their respective position papers. In compliance with the Order, complainant submitted his verified position paper.[6] Respondent did not.

Defined as issues before the IBP were:

> (1) Whether . . . the complaint filed by respondent against the complainant before the Office of the Court Administrator in Admin Matter OCA IPI No. 06-1842-MTJ was malicious, false and untruthful.
>
> (2) If in the affirmative, whether . . . respondent is guilty under the Code of Professional Responsibility.

On the first issue, the IBP Commissioner did not find respondent's complaint against herein complainant false and untruthful, it noting that respondent's complaint was dismissed by this Court due to insufficiency of evidence which, to the IBP, merely shows a "failure on the part of respondent to prove his allegations" against complainant.

Noting, however, this Court's August 30, 2006 Resolution finding respondent's complaint "unsubstantiated and motivated by plain, unfounded" suspicion, the Investigating Commissioner concluded that respondent "knowingly instituted not only a groundless suit against herein complainant, but also a suit based simply on his bare suspicion and speculation." (underscoring supplied)

On the second issue, the IBP found that by filing the groundless bribery charge against complainant, respondent violated the

[5] *Id*. at 39-46.

[6] *Id*. at 25-27.

proscription of the Code of Professional Responsibility against "wittingly or willingly promot[ing] or su[ing] any groundless suit" including baseless administrative complaints against judges and other court officers and employees.

The Investigating Commissioner thus concluded that

> while the evidence on record is sufficient to show that the allegations in respondent's affidavit-complaint against herein complainant were false, the evidence nonetheless show[s] that respondent had knowingly and maliciously instituted a groundless suit, based simply on his unfounded suspicions against complainant;[7] (Underscoring supplied)

and that he violated Canons 10,[8] 11,[9] & 12[10] and Rule 11.04[11] of the Code of Professional Responsibility under his oath of office.

He accordingly recommended that respondent be fined in the amount of ₱5,000, with a stern warning that a repetition of the same or similar act will be dealt with more severely.

The Board of Governors of the IBP, by Notice of Resolution,[12] informs that on November 22, 2007, it adopted the following Resolution adopting and approving with modification the Report and Recommendation of the Investigating Commissioner, *viz*:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and

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[7] *Id*. at 43.

[8] CANON 10 — A lawyer owes candor, fairness and good faith to the court.

[9] CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

[10] CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[11] Rule 11.04. — A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

[12] *Id*. at 38.

Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Canons 10, 11 and 12 and Rule 11.04 of the Code of Professional responsibility for filing a groundless suit against complainant, Atty. Jude Sabio is hereby **REPRIMANDED** with **Stern Warning** that a repetition of the same or similar act will be dealt with more severely. (Emphasis in the original)

The Court finds the action taken by the IBP Board of Governors well taken.

Respondent ought to be aware that if a court official or employee or a lawyer is to be disciplined, the evidence against him should be substantial, competent and derived from direct knowledge, not on mere allegations, conjectures, suppositions, or on the basis of hearsay.[13]

No doubt, it is this Court's duty to investigate the truth behind charges against judges and lawyers. But it is also its duty to shield them from unfounded suits which are intended to, among other things, harass them.

WHEREFORE, respondent, Atty. Jude Josue L. Sabio, is *FINED* in the amount of Five Thousand (₱5,000) Pesos, with a warning that a repetition of the same or similar questioned act will be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

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[13] *Vide Gotgoto et al. v. Renato Millora*, A.M. No. P-05-2005, June 8, 2005.

[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

SECOND DIVISION

[A.M. No. 08-1-11-MeTC. August 11, 2008]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **MYRENE C. BALISI, Court Stenographer II, Metropolitan Trial Court (MeTC), Branch 29, Manila,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; HABITUAL TARDINESS.—** Under CSC Memorandum Circular No. 04, Series of 1991, an officer or employee of the civil service is considered habitually tardy if he incurs tardiness regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or for at least two (2) consecutive months. To ensure its observance, it was circularized in the Court on May 5, 1998 for the information and guidance of all its officials and employees. The policy on absenteeism and tardiness was reiterated by the Court with the issuance of Administrative Circular No. 2-99 dated February 15, 1999 which provides that: Absenteeism and Tardiness, even if such do not qualify as "habitual" or "frequent" under CSC Memorandum Circular No. 04, S. 1991, shall be dealt with severely, and falsification of daily time records to cover-up for such absenteeism and/or tardiness shall constitute gross dishonesty and serious misconduct. This was further reiterated by the Court in Administrative Circular No. 14-2002, dated March 18, 2002.

2. **ID.; ID.; ID.; ID.; RESPONDENT'S REASON FOR HER TARDINESS, THAT SHE HAD TO ATTEND TO THE NEED OF HER 5-YEAR OLD DAUGHTER BEFORE GOING TO OFFICE CANNOT FREE HER FROM HER INFRACTIONS; NON-OFFICE REGULATIONS, HOUSEHOLD CHORES, AND DOMESTIC CONCERNS ARE NOT SUFFICIENT REASONS TO EXCUSE OR JUSTIFY HABITUAL TARDINESS; TARDINESS SERIOUSLY COMPROMISES EFFICIENCY AND HAMPERS PUBLIC SERVICE.—** In a long line of cases involving employees of the Court, the respondents offered varied

excuses for coming late to their offices. However, the Court had consistently ruled that non-office obligations, household chores, and domestic concerns are not sufficient reasons to excuse or justify habitual tardiness. Hence, Ms. Balisi's reason for her tardiness, that she has to attend to the need of her 5-year old daughter before going to her office, cannot free her from her infractions. The Court cannot countenance such infraction as it seriously compromises efficiency and hampers public service. By being habitually tardy, Ms. Balisi has fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. We have repeatedly reminded officials and employees of the Judiciary that by reason of the nature and functions of their office, they must be role models in the faithful observance of the constitutional canon that public office is a public trust. A way of doing this is through the strict observance of prescribed office hours and the efficient use of every working moment, if only to give back the true worth of what the Government, and ultimately, the people, pay in maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time, as punctuality is a virtue, absenteeism and tardiness are impermissible.

R E S O L U T I O N

BRION, *J*.:

A Report of Tardiness submitted by the Leave Division of the Office of the Court Administrator (OCA) on November 28, 2007, shows that Myrene C. Balisi, Court Stenographer II, Metropolitan Trial Court (MeTC), Branch 29, Manila, had been tardy in going to her office, eleven (11) times in February and fourteen (14) times in April 2007.

Required to comment on the Report, Ms. Balisi admitted her tardiness. She, however, reasoned out that before she could leave for the office, she has to attend to her 5-year old daughter whose nanny left and went home to the province. She could report for work on time only when she leaves her daughter to the care of her mother.

In her evaluation report, Court Administrator Zenaida N. Elepaño found that respondent "had indeed violated the rule on tardiness." According to her, Ms. Balisi's explanation does not merit consideration to justify her tardiness. Hence, Court Administrator Elepaño submitted the following recommendation:

> Respectfully submitted for the consideration of the Honorable Court recommending that this be RE-DOCKETED as a regular administrative matter; that Ms. Myrene C. Balisi, Court Stenographer II, MeTC, Branch 29, Manila, be REPRIMANDED for habitual tardiness and WARNED that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

Under CSC Memorandum Circular No. 04, Series of 1991, an officer or employee of the civil service is considered habitually tardy if he incurs tardiness regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or for at least two (2) consecutive months.[1] To ensure its observance, it was circularized in the Court on May 5, 1998 for the information and guidance of all its officials and employees.

The policy on absenteeism and tardiness was reiterated by the Court with the issuance of Administrative Circular No. 2-99 dated February 15, 1999 which provides that: Absenteeism and Tardiness, even if such do not qualify as "habitual" or "frequent" under CSC Memorandum Circular No. 04, S. 1991, shall be dealt with severely, and falsification of daily time records to cover-up for such absenteeism and/or tardiness shall constitute gross dishonesty and serious misconduct. This was further reiterated by the Court in Administrative Circular No. 14-2002, dated March 18, 2002.

In a long line of cases involving employees of the Court, the respondents offered varied excuses for coming late to their offices. However, the Court had consistently ruled that non-office obligations, household chores, and domestic concerns are not

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[1] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002,* A.M. No. 00-6-09-SC, August 14, 2003, 409 SCRA 1, 8.

sufficient reasons to excuse or justify habitual tardiness.[2] Hence, Ms. Balisi's reason for her tardiness, that she has to attend to the need of her 5-year old daughter before going to her office, cannot free her from her infractions. The Court cannot countenance such infraction as it seriously compromises efficiency and hampers public service. By being habitually tardy, Ms. Balisi has fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice.[3]

We have repeatedly reminded officials and employees of the Judiciary that by reason of the nature and functions of their office, they must be role models in the faithful observance of the constitutional canon that public office is a public trust.[4] A way of doing this is through the strict observance of prescribed office hours and the efficient use of every working moment, if only to give back the true worth of what the Government, and ultimately, the people, pay in maintaining the Judiciary.[5] Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time, as punctuality is a virtue, absenteeism and tardiness are impermissible.[6]

Under Section 52(c)(4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows: first offense, reprimand; second offense, suspension for 1 to 300 days; and third offense, dismissal from the service.

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[2] *Ibid*, citing *Re: Imposition of Corresponding Penalties on Employees of this Court for Habitual Tardiness Committed During the Second Semester of 2000,* 393 SCRA 9 (2002).

[3] *Ibid.*

[4] 1987 Constitution, Article XI, Section 1; *Re*:*Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002, supra* note 1.

[5] *Ibid.*

[6] *Ibid.*

WHEREFORE, we find respondent Myrene C. Balisi, Court Stenographer II, Branch 29, MeTC, Manila *GUILTY* of habitual tardiness. This being Ms. Balisi's first offense, she is hereby *REPRIMANDED with WARNING* that a repetition of the same or similar offense in the future will be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

EN BANC

[A.M. No. P-04-1916. August 11, 2008]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ARMAN Z. PANGANIBAN, Process Server, Municipal Circuit Trial Court, San Francisco, Quezon,** *respondent.*

[A.M. No. P-05-2012. August 11, 2008]

JUDGE ANICETO B. RAZO, Municipal Circuit Trial Court, San Francisco, Quezon, *complainant, vs.* **ARMAN Z. PANGANIBAN, Process Server, Municipal Circuit Trial Court, San Francisco, Quezon,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; PROCESS SERVERS;

[*] Designated additional member of the Second Division per Special Order No. 512 dated July 16, 2008.

DUTIES AND RESPONSIBILITIES— Respondent is a process server. As a process server, he serves court processes such as subpoena, subpoena *duces tecum*, summonses, court orders and notices; prepares and submits returns of service of court processes; monitors messages and delivers court mail matters received and dispatched by him; and performs such other duties as may be assigned to him. The duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices. There is, however, nothing that authorizes a process server to collect or receive any amount of money from any party-litigant or the accused.

2. **ID.; ID.; ID.; ID.; ID.; NOT AUTHORIZED TO COLLECT OR RECEIVE ANY AMOUNT FROM ANY PARTY FOR ANY PURPOSE; RESPONDENT'S ACT OF RECEIVING MONEY FROM A LITIGANT CONSTITUTES GRAVE MISCONDUCT IN OFFICE WARRANTING THE EXTREME PENALTY OF DISMISSAL FROM OFFICE EVEN ON A FIRST OFFENSE; CASE AT BAR.—** Respondent admitted he received from Elino ₱4,000 which was purportedly intended to pay for the surety bond of Jonathan who was charged with Acts of Lasciviousness. Due to respondent's failure to post the bond, Jonathan was arrested. Respondent, however, explained that the Wilson Surety Bond Insurance Company in Lucena City ceased operations. He claimed he returned the amount to Jonathan. In another case, respondent sent a letter to Fred Telar asking ₱1,400 allegedly for payment of a fine imposed on Yolanda, the accused in Criminal Case No. 5964 for Slight Physical Injuries. However, there was no order from the court imposing a fine in the criminal case. Respondent nonetheless received the amount. As process server, respondent was not authorized to collect or receive any amount from any party for any purpose. Clearly, respondent's act of collecting or receiving money from a litigant constitutes grave misconduct in office. It is this kind of gross misconduct, no matter how nominal the amount involved, on the part of those charged with administering and rendering justice, which erodes the respect for law and the courts. Grave misconduct is a grave offense which carries the extreme penalty of dismissal from the service even on a first offense. Dismissal carries with it the forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in government service.

3. ID.; ID.; ID.; ID.; BEING AMONG THOSE AT THE FRONTLINES OF THE JUDICIAL MACHINERY, THEIR CONDUCT SHOULD ALL THE MORE MAINTAIN THE PRESTIGE AND INTEGRITY OF THE COURT.— A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact on the administration of justice. A process server, being a judicial employee, is expected to act with prudence, restraint, courtesy, and dignity. Respondent must remember the oft-quoted reminder to all who work in the judiciary that the conduct of everyone charged with the administration of justice — from the presiding judge to the lowliest clerk — should be circumscribed with the heavy burden of responsibility, free from any suspicion that may taint the well-guarded image of the judiciary. Being among those at the frontlines of our judicial machinery, process servers are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of all its employees. It is the imperative duty of every employee in the court to maintain its good name and standing as a true temple of justice. Thus, every employee in the court should be an exemplar of integrity, uprightness, and honesty. The Court will not tolerate or condone any conduct of judicial employees which tends to diminish or actually diminishes the faith of the people in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

As an offshoot of the Order dated 31 May 2004 issued by Judge Aniceto B. Razo (Judge Razo), acting presiding judge of the Municipal Circuit Trial Court of San Francisco, Quezon (MCTC-San Francisco), two administrative cases were lodged against respondent Arman Z. Panganiban (respondent), process server of the same court. A.M. No. P-05-2012[1] is for Grave

[1] Formerly A.M. OCA IPI No. 04-1973-P.

Misconduct, while A.M. No. P-04-1916[2] charges respondent with Misappropriation.

Judge Razo issued an Order dated 31 May 2004[3] directing respondent to explain in writing why no disciplinary action should be taken against him for:

1. Exacting the amount of Four Thousand Pesos (₱4,000.00) from Bethsa(i)da Puyos Marentes and El(i)no Marentes on April 6, 2003 allegedly for posting a surety bond for Jonathan Marentes who is being charge(d) of Acts of Lasciviousness. The said Jonathan Marentes was arrested on April 7, 2004 by virtue of the warrant issued by the Court on March 31, 2003. In fairness to the said accused and his mother Bethsaida Puyos Marentes and El(i)no Marentes, he was released from custody upon executing sworn statements that they entrusted to you the amount of Four Thousand Pesos (₱4,000.00) for his bail but you did not turn over the money to the surety company and left the poor accused without bail.
2. For exacting the amount of Two Thousand (₱2,000.00) pesos from the accused Yolanda, Jaime, Ricky, Erlito and Andres, all surnamed Rico, allegedly for the amount of the fine when in fact the accused has not pleaded guilty yet for lack of counsel to assist them in their arraignment and no judgment has been rendered by this Court at the time.

This order-memorandum is the subject of A.M. No. P-05-2012 for Grave Misconduct.

On 5 July 2004, Judge Razo sent a letter to then Court Administrator, now Associate Justice of this Court, Presbitero J. Velasco, Jr., on the alleged illegal acts committed by respondent which consisted of misappropriating ₱4,000 for payment of surety bond in Criminal Case No. 5900 and exacting ₱2,000 as fine from the accused in Criminal Case No. 5964. Judge Razo recommended administrative sanctions against respondent

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[2] Formerly A.M. OCA IPI No. 04-10-303-MCTC.

[3] *Rollo* (A.M. No. P-05-2012), pp. 002-003.

for acts which erode the faith and confidence of the public in the judiciary.[4] This was docketed as A.M. No. P-04-1916.

In his Letter dated 13 September 2004 in A.M. No. P-05-2012,[5] respondent attached a certification issued by Princesita A. Edades, Clerk of Court II of the MCTC-San Francisco (Clerk of Court Edades), stating that on 4 February 2004, respondent turned over to her ₱1,400 which Yolanda Rico (Yolanda) gave to him as fine in Criminal Case No. 5964 for Slight Physical Injuries. Respondent likewise attached a "Sinumpaang Salaysay" executed by Elino Marentes (Elino) to the effect that ₱4,000 was given to respondent for payment of surety bond for Jonathan Marentes (Jonathan) in a criminal case for acts of lasciviousness and that the money was returned to Elino because the surety company was blacklisted.

On 1 December 2004, the Court, in A.M. No. P-04-1916, issued a Resolution placing respondent under preventive suspension pending investigation of the complaint. The case was referred to the Executive Judge of the Regional Trial Court of Gumaca, Quezon for investigation, report and recommendation.[6]

On 6 April 2005, the Office of the Court Administrator (OCA) recommended that A.M. No. P-05-2012 be referred to the Executive Judge of the Regional Trial Court of Gumaca, Quezon, for investigation, report and recommendation. The OCA posits the view that accepting money for the purpose of obtaining a surety bond for an accused in a criminal case is not part of respondent's duties as a process server and that there appears to be a glaring conflict between Judge Razo's memorandum and the certification of Clerk of Court Edades.[7]

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[4] *Rollo* (A.M. No. P-04-1916), p. 3.

[5] *Rollo* (A.M. No. P-05-2012), pp. 009-014.

[6] *Rollo* (A.M. No. P-04-1916), p. 13.

[7] *Rollo* (A.M. No. P-05-2012), pp. 015-018.

On 8 June 2005, A.M. No. P-05-2012 was referred to the Executive Judge of the Regional Trial Court of Gumaca, Quezon for investigation, report and recommendation.[8]

On 15 September 2005, Judge Aurora V. Maqueda-Roman, Executive Judge of the Regional Trial Court of Gumaca, Quezon (Investigating Judge), submitted her Report and Recommendation on these two administrative cases. Based on the evidence submitted by the parties, the Investigating Judge made the following findings: [9]

1. Exacting the amount of Four Thousand Pesos from Bethsa(id)a Puyos Marentes and El(i)no Marentes in Crim. Case No. 5900 entitled *People vs. Jonathan Marentes*:

As unraveled from the facts presented from the testimonies of the witnesses Arman Z. Panganiban, Clerk of Court II, Princesita Edades, El(i)no Marentes, Yolanda Rico and Godofredo Telar and from the documentary evidence presented during the investigation conducted by the undersigned, it shows that on April 6, 2003, El(i)no Marentes gave the amount of Four Thousand pesos (Php4,000.00) to respondent Arman Panganiban in the house of Toriano Patriarca in San Andres, Quezon, intended to be posted as surety bond for Jonathan Marentes who was charged for Acts of Lasciviousness. Respondent Arman Z. Panganiban admitted this fact that he received the said amount of Php4,000.00 from El(i)no Marentes, which fact was corroborated by El(i)no Marentes and attested to by him together with Bethsaida Puyos Marentes in an affidavit dated April 11, 2003. No receipt was presented as proof of receipt of said money by respondent. Respondent failed to post the said bond for Jonathan. As a consequence Jonathan was arrested on April 7, 2003, after one (1) month the reason he averred for his failure to post the surety bond for Jonathan was that the Wilson Surety Bond Insurance Company, in Lucena ceased operation.

Striking to the mind of the Court was the testimony of Elino Marentes that Respondent Arman Z. Panganiban voluntarily came to them and asked that the amount of Php4,000.00 be given to him

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[8] *Id*. at 19.

[9] Report and Recommendation, *rollo* of A.M. No. P-04-1916.

to be posted as bond for her nephew. He gave the amount of Php4,000.00 on April 6, 2003 for the respondent and the latter returned the same to his nephew on May 9, 2004, without being asked to give it back. (Tsn, March 9, 2005, p. 5).

But undersigned was more baffled when although admitting he received the amount from Elino Marentes(,) respondent could not tell the date when he received the amount of Php4,000.00 and the date he returned the same. (Tsn, Jan. 31, 2005, page 3). There can be no other reason to be drawn except that he did not want to expose the truth on how long he had kept the money for himself having applied the same for his own personal use.

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Re:

1.) Exacting the amount of Two Thousand Pesos as fine from accused Yolanda Rico, *et al*., in Criminal Case No. 5964:

On October 10, 2003, respondent Arman Z. Panganiban sent a letter to Mr. Fred Telar asking for Php1,400.00 allegedly for the payment of the fine of the accused relative to Criminal Case No. 5964 entitled *People vs. Yoland(a) Rico, et al*, for slight physical injuries. On the same date, Fred Telar gave the amount of Php1,400.00 to the respondent. The scheduled hearing of the case was on February 2, 2004. Before the scheduled hearing, Judge Razo talked to the Ricos, who are his townmates, and told the latter to just pay the fine in the amount of Php1,400.00. Judge Razo asked the Ricos if they have the available money for the payment of the fine but the Ricos answered that they have already given the money to respondent thru Godofredo Telar, their landlord. Judge Razo summoned the Clerk of Court II, Princesita Edades to the chamber and told the latter that the Ricos had already paid the fine thru respondent Arman Panganiban. As told by Judge Razo, the Clerk of Court demanded from the respondent about for the payment of the Php1,400.00. She asked the respondent about the fine and she was told by Arman Panganiban that it is in their house. When Arman Panganiban delivered the amount of Php1,400.00 on February 4, 2004, Clerk of Court Princesita Edades did not issue the receipt because the hearing was postponed. There was no court order for the payment of the fine because the hearing was postponed due to absence of a counsel to represent the accused. The respondent anticipated for the payment of fine despite that there was no order yet for its payment.

The Investigating Judge found respondent guilty of "gross misconduct" and recommended his suspension for six months without pay and the payment of fine of ₱5,000, with a warning that the commission of the same acts in the future will be dealt with more severely.

The Report and Recommendation was referred to the OCA for evaluation, report and recommendation.[10]

On 31 July 2006, this Court issued a Resolution consolidating the two administrative cases considering that both cases involve the same respondent.

The OCA found respondent guilty of grave misconduct. Respondent's act of exacting an amount from a party-litigant purportedly as payment of fine for which no order was yet issued by the court constitutes dishonesty and extortion and falls short of the required standards of public service. Moreover, respondent's overzealousness and personal interest to post bail for an accused create a suspicion in his conduct. Posting of a bond is not within the scope of respondent's duties as a process server.

The OCA recommended that respondent be dismissed from the service with forfeiture of retirement benefits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We agree with the OCA.

Respondent is a process server. As a process server, he serves court processes such as subpoena, subpoena *duces tecum*, summonses, court orders and notices; prepares and submits returns of service of court processes; monitors messages and delivers court mail matters received and dispatched by him; and performs such other duties as may be assigned to him.[11]

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[10] Resolution of 14 November 2005, *rollo* of A.M. No. P-05-2012.

[11] The Revised Manual for Clerks of Court, Vol. I, p. 203; *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216, 20 April 2007, 521 SCRA 489; *Reyes v. Pablico*, A.M. No. P-06-2109, 27 November 2006, 508 SCRA 146.

The duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices. There is, however, nothing that authorizes a process server to collect or receive any amount of money from any party-litigant or the accused.

Respondent admitted he received from Elino ₱4,000 which was purportedly intended to pay for the surety bond of Jonathan who was charged with Acts of Lasciviousness. Due to respondent's failure to post the bond, Jonathan was arrested. Respondent, however, explained that the Wilson Surety Bond Insurance Company in Lucena City ceased operations. He claimed he returned the amount to Jonathan. In another case, respondent sent a letter to Fred Telar asking ₱1,400 allegedly for payment of a fine imposed on Yolanda, the accused in Criminal Case No. 5964 for Slight Physical Injuries. However, there was no order from the court imposing a fine in the criminal case. Respondent nonetheless received the amount.

As process server, respondent was not authorized to collect or receive any amount from any party for any purpose. Clearly, respondent's act of collecting or receiving money from a litigant constitutes grave misconduct in office. It is this kind of gross misconduct, no matter how nominal the amount involved, on the part of those charged with administering and rendering justice, which erodes the respect for law and the courts.[12] Grave misconduct is a grave offense which carries the extreme penalty of dismissal from the service even on a first offense.[13] Dismissal carries with it the forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in government service.[14]

A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact

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[12] *Id.*

[13] Sec. 52(A)(3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service.

[14] Sec. 58, Rule IV, Uniform Rules on Administrative Cases in the Civil Service.

on the administration of justice.[15] A process server, being a judicial employee, is expected to act with prudence, restraint, courtesy, and dignity. Respondent must remember the oft-quoted reminder to all who work in the judiciary that the conduct of everyone charged with the administration of justice — from the presiding judge to the lowliest clerk — should be circumscribed with the heavy burden of responsibility, free from any suspicion that may taint the well-guarded image of the judiciary. Being among those at the frontlines of our judicial machinery, process servers are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court.[16]

The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of all its employees. It is the imperative duty of every employee in the court to maintain its good name and standing as a true temple of justice. Thus, every employee in the court should be an exemplar of integrity, uprightness, and honesty. The Court will not tolerate or condone any conduct of judicial employees which tends to diminish or actually diminishes the faith of the people in the Judiciary.[17]

WHEREFORE, we find respondent Arman Z. Panganiban, Process Server of the Municipal Circuit Trial Court, San Francisco, Quezon, *GUILTY* of *GRAVE MISCONDUCT*. Accordingly, we *DISMISS* respondent from the service, with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service, including government-owned or controlled corporations. This judgment is immediately executory.

SO ORDERED.

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[15] *Ulat-Marrero v. Torio, Jr.*, 461 Phil. 654 (2003).

[16] *Cabanatan v. Molina*, 421 Phil. 664 (2001).

[17] *Chiong v. Baloloy*, A.M. No. P-01-1523, 27 October 2006, 505 SCRA 528.

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.

THIRD DIVISION

[A.M. No. P-07-2359. August 11, 2008]
(Formerly OCA IPI No. 05-2304-P)

JUDGE OFELIA CALO, MeTC, Branch 59, Mandaluyong City and PABLEA TAMAYO, *complainants, vs.* **RICARDO L. DIZON, Sheriff III, MeTC, Branch 59, Mandaluyong City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; SHERIFFS; IT IS MANDATORY FOR SHERIFFS TO MAKE A RETURN OF WRITS OF EXECUTION WITHIN THE PERIOD PROVIDED BY THE RULES OF COURT TO APPRAISE THE COURT AS WELL THE LITIGANTS OF THE PROCEEDINGS UNDERTAKEN IN CONNECTION THEREWITH.—** Section 14, Rule 39 of the Rules of Court explicitly provides the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. As stated, it is mandatory for the sheriff to execute and make a return on the writ of execution within the period provided by the Rules of Court. Moreover, the sheriff must make periodic reports on

partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. Such periodic reporting on the status of the writs must be done by the sheriff regularly and consistently every 30 days until they are returned fully satisfied.

2. **ID.; ID.; ID.; ID.; ID.; RESPONDENT SHERIFF FAILED TO COMPLY WITH HIS MINISTERIAL DUTY TO STATE IN THE SHERIFF'S RETURN, AS WELL AS IN HIS PERIODIC REPORTS, THE ALLEGED "IMPEDIMENT" IN THE IMPLEMENTATION OF THE WRIT AND THE REASON WHY THE MONETARY JUDGMENT AWARD REMAINED UNSATISFIED.—** Unchallenged by Sheriff Dizon is the non-execution of the writ of execution in Civil Case No. 18787, as well as his failure to make the timely and appropriate reports thereon, as required by the foregoing rule. He even candidly admitted his lapses and shortcomings in the performance of his duties in his 16 November 2005 comment. It is worthy to mention that Sheriff Dizon received the writ of execution for implementation on 20 September 2004, yet it took him more than four months to partially implement the said writ on 31 January 2005. Moreover, any fault he ascribed to Mrs. Tamayo for her alleged failure to provide him with police assistance, notwithstanding, Sheriff Dizon failed to comply with his ministerial duty to state in the Sheriff's Return, as well as in his periodic reports, the alleged "impediment" in the implementation of the writ and the reason why the monetary judgment award remained unsatisfied.

3. **ID.; ID.; ID.; ID.; ID.; NO SUBSTANTIAL EVIDENCE TO PROVE THAT RESPONDENT SHERIFF RECEIVED THE ALLEGED ₱10,000.00 SHERIFF'S FEE.—** As to the ₱10,000.00 sheriff's fee, there appears to be no substantial evidence to prove that Sheriff Dizon received the same. In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint. Mere suspicion without proof cannot be the basis of conviction. In the instant case, Mrs. Tamayo failed to discharge that burden. In fact, it was not even alleged in the complaint that Sheriff Dizon asked for or received the said amount. The "dispositive portion of the decision" referred to by Mrs. Tamayo, which supposedly included the amount of ₱10,000.00 sheriff's

fee, was apparently expanded by her to justify her claims for additional monetary awards.

4. **ID.; ID.; ID.; ID.; ID.; SHERIFF'S IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE.—** Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. Being the frontline representative of the justice system, a sheriff must always exert every effort and, indeed, consider it his bounden duty, to perform his duties in order to maintain public trust. He must see to it that the final stage in the litigation process — the execution of the judgment — is carried out with no unnecessary delay, in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely delayed due to his neglect of duty renders it inutile; and worse, the parties who are prejudiced thereby tend to condemn the entire judicial system.

5. **ID.; ID.; ID.; ID.; ID.; SHERIFF'S DUTY IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL; NO DISCRETION WHETHER TO EXECUTE THE JUDGMENT OR NOT.—** The Court has said time and again that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.

6. **ID.; ID.; ID.; ID.; ID.; NEGLECT OF DUTY; THE FAILURE OF RESPONDENT SHERIFF TO CARRY OUT WHAT IS PURELY A MINISTERIAL DUTY CANNOT BE JUSTIFIED AND THE PROCRASTINATION DISPLAYED BY HIM,**

RESULTING IN THE LONG DELAY IN THE EXECUTION OF JUDGMENTS IS DEPLORABLE.— The failure of Sheriff Dizon to carry out what is a purely ministerial duty cannot be justified. The procrastination displayed by him, resulting in the long delay in the execution of court judgments, is truly deplorable. Clearly, Sheriff Dizon failed to observe the degree of dedication to the duties and responsibilities required of him as a sheriff. Through his failure, he breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. The court cannot countenance such dereliction of duty, as it erodes the faith and trust of the citizenry in the judiciary. As an implementing officer of the court, Sheriff Dizon should set the example by faithfully observing, and not brazenly disregarding, the Rules. By his actuations, Sheriff Dizon displayed conduct short of the stringent standards required of Court employees. He is guilty of simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

7. ID.; ID.; ID.; ID.; ID.; A FINE OF TWENTY THOUSAND PESOS (₱20,000.00) IS CONSIDERED SUFFICIENT IN LIEU OF THE IMPOSABLE PENALTY OF TWO (2) MONTHS SUSPENSION GIVEN THE INTERVENING EVENT OF RESPONDENT SHERIFF'S DEATH ON 12 MARCH 2008.— Sheriff Dizon has been an accountable officer of the court for more than 20 years and is, thus, presumed to have imbibed at least the fundamental rules and principles in implementing the writ of execution. However, considering that this is the first time he is found guilty of an offense in his almost twenty-five years of service in the judiciary, the Court is inclined to grant him a certain leniency without being unmindful of the fact that he had breached the provisions of the Rules of Court. For this reason, the Court is wont to impose the penalty of two (2) months' suspension; but, given the intervening event of Sheriff Dizon's death on 12 March 2008, a fine in the amount of Twenty Thousand Pesos (₱20,000.00) would suffice.

RESOLUTION

CHICO-NAZARIO, *J.*:

The administrative case at bar arose from the letter[1] dated 6 January 2005 of Mr. Melo M. Acuna, Station Manager of Radio Veritas, informing the Office of the Court Administrator (OCA) of the plight of Mrs. Pablea Tamayo (Mrs. Tamayo), plaintiff in Civil Case No. 18787, a case for unlawful detainer, pending before the Metropolitan Trial Court (MeTC), Branch 59, Mandaluyong City. The MeTC, in its Decision dated 29 April 2003, ruled in favor of plaintiff Mrs. Tamayo and ordered the defendants Neron Ladaga, Luisa Ladaga, Olympio Taray, and all other persons claiming rights under them, "to vacate the subject premises, pay the amount of ₱3,000.00 as attorney's fees and pay the costs of suit." Pursuant to the Decision dated 29 April 2003 of MeTC Judge Marilyn Payoyo-Villordon, a writ of execution dated 14 September 2004 was issued, addressed to Sheriff Ricardo Dizon (Sheriff Dizon), which reads:

> WHEREAS, in the above-entitled action for Forcible Entry and Illegal Detainer of the following described premises, to wit: 360 Addition Hills, Mandaluyong City, lately tried before me, wherein judgment was rendered on 29 April 2003, that the plaintiff aforesaid have restitution of the premises, and also that he recovers the rent in arrears, and damages in the amount of ₱_________ and also that he recovers cost in the sum of ₱_________ x x x.
>
> NOW, THEREFORE, you are hereby commanded to cause the defendant aforesaid to forthwith be removed from the premises and that the plaintiff aforesaid to have restitution of the same; also that you collect from defendant the rent, damages, and costs in the amount aforesaid, and your fees for the service of this execution, and upon the failure of defendant to pay same, that you seize the goods and chattels of the said defendant, except such are by law exempt, and make sale thereof according to the law in such cases made and provided to the amount of said judgment and costs and interest hereon from the date of said judgment, together with your fees upon this execution,

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[1] *Rollo*, p. 1.

and pay the amount so collected by you hereunder to the plaintiff in said action except the amount of your fees hereon.

In case sufficient personal property of the said defendant cannot be found to satisfy the amount of said judgment, costs, interest, and your fees hereon, you are directed to levy upon any real estate of Neron & Luisa Ladaga and Olympio Taray, defendant, and to sell the same in the manner provided by law for the satisfaction of the balance of said judgment, costs, interest, and your fees hereon, and that you make return of your proceedings hereunder upon this writ within 60 days from receipt hereof.[2]

Sheriff Dizon, though, failed to implement the MeTC Decision dated 29 April 2003.

The OCA referred[3] the matter to Judge Ofelia L. Calo (Judge Calo) of MeTC, Branch 1, Mandaluyong City, for appropriate action on 10 January 2005, and again on 2 March 2005. Judge Calo was instructed to submit a report on any action taken on the matter.

In her Report[4] dated 18 April 2005, Judge Calo stated that she required Sheriff Dizon to comment on the complaint of Mrs. Tamayo, but found his explanation unsatisfactory. She reported that the ₱10,000.00 sheriff's fee declared by Sheriff Dizon as part of the execution expenses was highly irregular for lack of approval by the court and failure of Sheriff Dizon to explain how the money was spent. Judge Calo concluded that Sheriff Dizon must have misappropriated the amount.

Still, according to Judge Calo's report, the writ of execution in Civil Case No. 18787 was received by Sheriff Dizon on 20 September 2004. While the Sheriff's Return stated that the writ was satisfactorily enforced with the turnover of the subject premises to Mrs. Tamayo on 31 January 2005, it did not constitute a full execution of the judgment, because the money award therein was never satisfied. Sheriff Dizon failed to exert reasonable effort to fully implement the writ.

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[2] *Id.* at 17.

[3] *Id.* at 2.

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

In addition to the subject civil case, Judge Calo also took note of several cases in which the integrity of Sheriff Dizon in the performance of his functions was put in issue, to wit:

1. In Civil Case No. 18317 entitled "*Teresita Brioso v. Chit Penus,*" for Sum of Money, the plaintiff filed a Motion for Appointment of a Special Sheriff because sheriff Dizon was unable to enforce the writ of execution. In his report, sheriff Dizon alleged that the judgment could not be enforced because the defendant does not have any real or personal property to be levied upon. Plaintiff filed another motion reiterating her earlier motion for appointment of a special sheriff. During the hearing, plaintiff declared in open court that the defendant has personal properties such as refrigerator and computer. In addition, the record reveals that the filing of the return was made several months late. In an Order date 31 March 2005, the court granted the motion of the plaintiff for the appointment of a special sheriff to enforce the writ of execution.

2. In Civil Case No. 19171 entitled "*Genie Grace Tuyay and Joel Tuyay v. P. Ador De Asis*" for Unlawful Detainer, defendant filed a verified Motion to Cite Deputy Sheriff Ricardo Dizon for Contempt of Court. According to defendant, sheriff Dizon failed to provide him with full statement of the proceedings under the writ and an itemized list of the properties attached. In addition, instead of depositing the attached property in court, sheriff Dizon turned them over to the plaintiff. Subsequently, the court, in an Order dated 01 September 2004, dissolved the writ of attachment and ordered sheriff Dizon to return the items to the defendant. Although the petition for contempt did not push through because of defendant's failure to pay the necessary filing fee, sheriff Dizon has yet to submit his compliance to the aforesaid order as in fact, the record reveals that he has not submitted any report as regards the implementation of the writ. It was only after the court ordered him to explain such inaction that he submitted his report.

3. In Civil Case No. 19438 entitled "*Eagle Financial Service Group, Inc. v. Sps. Angelito and Violeta Langubnan*" for Sum of Money, the court dismissed the case for failure of

the plaintiff to cause the service of summons for six (6) months. Plaintiff filed a Motion for Reconsideration alleging that it has already advanced the amount of ₱1,500.00 to sheriff Dizon for the service of summons. The latter admitted having received the money but reasoned out that it was plaintiff's counsel who agreed to hold in abeyance the service of summons pending the availability of funds for the service of summonses in other civil cases. Judge Calo noted that the sheriff has no authority to withhold the service of summons upon the mere plea of the plaintiff.

4. In Civil Case No. 19696 entitled "*Radiowealth Finance Company, Inc. v. Sps. Alden Arcinas & Lilia Arcinas and John Doe*" for Recovery of Possession, plaintiff filed an *Ex Parte* Motion to Compel Sheriff to Implement the Writ of Replevin because of sheriff Dizon's refusal to implement the writ. Sheriff Dizon explained that he served the summons upon a certain Alex Canaveral who introduced himself as a lawyer and upon whose possession the vehicle was found. Canaveral allegedly refused to surrender possession of the vehicle and despite prodding of plaintiff's representative, he desisted from seizing the vehicle in order to prevent the happening of any untoward incident considering that plaintiff refused to avail of the presence of police officers. The court reprimanded sheriff Dizon with a stern warning that a repetition of same or similar act will be dealt with more severely citing that there was no basis that would indicate a threat to his life or limb. It is also incumbent upon him to coordinate with the police.[5]

On the basis of Judge Calo's report, the OCA made the following recommendations:

A perusal of the documents submitted before us reveals that the complaints against sheriff Dizon are serious in nature and should be given due course. The initial investigation conducted by Judge Ofelia L. Calo provided sufficient basis to continue with the administrative proceedings against the said sheriff. Meanwhile, in the interest of due process, sheriff Dizon must be given the chance to answer the charges against him.

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

WHEREFORE, in view of the foregoing, it is most respectfully recommended that:

1. The report dated 18 April 2005 of Judge Ofelia L. Calo be TREATED as administrative complaint against sheriff Dizon in addition to the letter-complaint of Mrs. Pablea G. Tamayo;

2. That the instant complaint be DOCKETED for informal preliminary inquiry;

3. That sheriff Ricardo L. Dizon be required to COMMENT on the letter of Mr. Melo M. Acuna and the Report dated 18 April 2005 of Judge Ofelia L. Calo within ten (10) days from receipt hereof.[6]

In his comment[7] dated 16 November 2005, Sheriff Dizon stated that he could not immediately act on the writ of execution in Civil Case No. 18787 due to Mrs. Tamayo's inability to provide him with police assistance on the scheduled date of its implementation. Therein defendants and their supporters already exhibited disrespect for the authorities and obviously would exert physical violence to thwart the execution. It was only on 31 January 2005 that police authorities were made available to assist Sheriff Dizon. Sheriff Dizon alleged that he implemented the writ despite the invectives hurled against him by the irate defendants. The possession of the subject premises was thus already transferred to Mrs. Tamayo. Sheriff Dizon further asserted that he could not be faulted for his failure to execute the monetary judgment award, since, during the implementation of the writ, nothing was left in the subject premises except a clutter of old clothes, kitchen utensils, and rickety makeshift furniture.

Sheriff Dizon argued that the conclusions of Judge Calo that the former received ₱10,000.00 from Mrs. Tamayo and misappropriated the same had no basis. He was not able to deny that he received the ₱10,000.00 because Mrs. Tamayo never alleged that she gave said amount to him and that he

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[6] *Id.* at 50.

[7] *Id.* at 54-58.

received the same. Sheriff Dizon explained that Mrs. Tamayo had her own version of the dispositive portion of the MeTC Decision dated 29 April 2003, including therein several amounts not actually mentioned in the said decision. He averred that his refusal to collect Mrs. Tamayo's purported damages and unpaid rentals from the defendants was for the simple reason that they were not covered by the MeTC Decision dated 29 April 2003.

Sheriff Dizon then proceeded to state his side on the other cases cited by Judge Calo in which he did not perform his functions.

In Civil Case No. 18317 entitled, *"Teresita Brioso v. Chit Penus*," Sheriff Dizon clarified that the writ of execution issued therein was not implemented because the defendant did not make any payment and had no properties to be levied upon. Respondent informed the plaintiff of this fact but her counsel moved for the appointment of a special sheriff. It was not correct to state that he failed to enforce the writ. The writ was immediately acted upon but the enforcement was unsuccessful. He, however, admitted that he failed to render a report of the proceedings on time.

As for Civil Case No. 19171 entitled, "*Genie Grace Tuyay v. P. Ador de Asis,*" Sheriff Dizon alleged that he executed the order of attachment by taking one meat-grinding machine, one chest freezer and one defective GE refrigerator. These items were deposited at plaintiff's residence, because there was no space in the court where they could be stored, and plaintiff did not want to shoulder the expenses for their storage in a bonded warehouse. Sheriff Dizon justified his action by arguing that the rule on the custody of attached goods is not absolute. Again, he admitted that he failed to immediately submit a report of the proceedings, but his report was submitted nonetheless.

Sheriff Dizon explained that in Civil Case No. 19438 entitled, "*Eagle Financial Services Group, Inc. v. Sps. Angelito and Violeta Langubnan*," the plaintiff's counsel handed him ₱1,500.00 as sheriff's expenses for the service of summons in Sagana, Santiago City, Isabela. The said counsel advised Sheriff Dizon to wait for the summons in the other cases the former filed in

court that also needed to be served in the remote northern provinces. As sheriff, he is responsible for the speedy and efficient service of all court processes. Given a situation in which it is possible for him to serve more summons in far-off places, common sense dictates that he arrange a schedule and make arrangements that would enable him to achieve more in a single trip.

Relative to Civil Case No. 19696, Sheriff Dizon pointed out that he did not seize the vehicle subject of the writ of replevin therein for the reason that the vehicle was in a company compound and heavily guarded by armed security men. He was also not provided any police assistance. He wanted to accomplish his work, but he had to exercise prudence in doing so.

On 28 June 2006, the Court directed Judge Calo and Mrs. Tamayo to file a reply to Sheriff Dizon's comment.

In her reply[8] dated 30 August 2006, Judge Calo stated that Mrs. Tamayo's interpretation of the dispositive portion of the MeTC Decision dated 29 April 2003 included the amount of ₱10,000.00 as sheriff's fee, ₱100,000.00 as damages, and ₱17,800.00 as rent in arrears. Judge Calo maintained that she would not have concluded that Sheriff Dizon received ₱10,000.00 from Mrs. Tamayo and misappropriated the same if Sheriff Dizon had made a categorical denial of receipt of the said amount when he submitted his comment to Judge Calo.

Judge Calo further informed the Court that after she submitted her report (re: 1st Indorsement dated 2 March 2005), she made a continuing effort to monitor Sheriff Dizon's implementation of court processes, including writs of execution; and that Sheriff Dizon was made to submit an itinerary of travel and estimate of expenses subject to her approval whenever he was scheduled to implement the court processes. As a result, miscommunication and misunderstanding were avoided during the service of summons and implementation of writs. Judge Calo additionally observed that Sheriff Dizon was now more cautious with his work, and

[8] *Id.* at 69-70.

this administrative matter has served as a stern warning to him to deal with the litigants expeditiously and honestly.

Judge Calo's second reply dated 30 October 2006 is a mere reproduction of her previous reply.

In her letter dated 3 November 2006, Mrs. Tamayo apologized to the Court for her late response. In her attached undated letter, received by the Docket and Clearance Division-OCA on 17 August 2006, she commended Judge Calo for her report on the administrative matter, again questioned Sheriff Dizon's failure to fully implement the writ of execution in Civil Case No. 18787, and informed the Court that Sheriff Dizon advised her to withdraw her administrative complaint.

The Court in its 20 November 2006 Resolution referred the replies of Judge Calo and letters of Mrs. Tamayo to the OCA for evaluation, report and recommendation.

On 8 March 2007, the OCA submitted its report,[9] recommending the suspension of Sheriff Dizon, thus:

> This office finds that respondent disregarded the rules on the implementation of the writs of execution, attachment and replevin, service of summons and filing of the required sheriff's return which is tantamount to simple neglect of duty punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second.
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> In view of the foregoing, it respectfully recommended that respondent sheriff Ricardo L. Dizon by **SUSPENDED** for **three (3) months** with **STERN WARNING** that a repetition of similar infraction shall be dealt with more severely.

On 15 August 2007, the Court required [10] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Judge Calo[11]

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[9] *Id.* at 93.

[10] *Id.* at 96.

[11] *Id.* at 99.

and Mrs. Tamayo[12] submitted separate manifestations stating that they were submitting the case for resolution based on the pleadings filed. However, Sheriff Dizon failed to file his manifestation within the period given by the Court despite notice sent to and received by him. Thus, the Court deemed waived Sheriff Dizon's submission of supplemental comment/pleadings.

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

Before proceeding, it appears that Sheriff Dizon died on 12 March 2008 as evidenced by a Certificate of Death issued by the Office of the Civil Registrar of Morong, Rizal.

After a review of the administrative case, the Court agrees in the findings of the OCA, except for the recommended penalty.

Section 14, Rule 39 of the Rules of Court explicitly provides the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. **Section 14** reads:

Sec. 14. Return of writ of execution. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof furnished the parties.

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[12] *Id.* at 98.

As stated, it is mandatory for the sheriff to execute and make a return on the writ of execution within the period provided by the Rules of Court. Moreover, the sheriff must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. Such periodic reporting on the status of the writs must be done by the sheriff regularly and consistently every 30 days until they are returned fully satisfied.

Unchallenged by Sheriff Dizon is the non-execution of the writ of execution in Civil Case No. 18787, as well as his failure to make the timely and appropriate reports thereon, as required by the foregoing rule. He even candidly admitted his lapses and shortcomings in the performance of his duties in his 16 November 2005 comment, as quoted below:

1. "x x x. In it I pointed out the fact that it was the plaintiff's inability to furnish me with police assistance that I could not immediately act on the Writ, considering the location of the premises, a slum area, and the defiant attitude of the defendants. That was not an imagined threat or situation. On that occasion when I proceeded to the subject premises to announce to the defendants the issuance of the Writ of execution, copies of which were furnished them, while trying to spot any leviable property within the premises, the defendants and their sympathizers had already exhibited disrespect for authorities and would no doubt exert physical violence to thwart execution. **I then requested the plaintiff to seek police assistance on the date the writ would be implemented to which he acceded, but on the date set, the plaintiff failed to show. Her presence, in fact, was not necessary but there was no police assistance as promised in order to protect everyman's life and limb during the execution**.

2. It was only on January 31, 2005 that plaintiff provided me with police assistance. The implementation of the Writ proceeded despite the invectives hurled against me by the irate defendants and their mob of sympathizers. Immediately, the subject premises was turned over to the possession of the plaintiff;[13]

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[13] *Id.* at 54-55.

It is worthy to mention that Sheriff Dizon received the writ of execution for implementation on 20 September 2004, yet it took him more than four months to partially implement the said writ on 31 January 2005. Moreover, any fault he ascribed to Mrs. Tamayo for her alleged failure to provide him with police assistance, notwithstanding, Sheriff Dizon failed to comply with his ministerial duty to state in the Sheriff's Return, as well as in his periodic reports, the alleged "impediment" in the implementation of the writ and the reason why the monetary judgment award remained unsatisfied.

As to the ₱10,000.00 sheriff's fee, there appears to be no substantial evidence to prove that Sheriff Dizon received the same. In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint.[14] Mere suspicion without proof cannot be the basis of conviction.[15] In the instant case, Mrs. Tamayo failed to discharge that burden. In fact, it was not even alleged in the complaint that Sheriff Dizon asked for or received the said amount. The "dispositive portion of the decision" referred to by Mrs. Tamayo, which supposedly included the amount of ₱10,000.00 sheriff's fee, was apparently expanded by her to justify her claims for additional monetary awards.

In any event, this Court takes note of the alarming pattern in Sheriff Dizon's performance of his official functions.

In Civil Case No. 18317, Sheriff Dizon admitted his failure to implement the writ and to make a return thereon on time:

> 5. Civil Case No. 18317 x x x No payment was made by the defendant and nothing leviable was in sight within her residence. After having informed the plaintiff of such a fact, her counsel moved for appointment of a special sheriff in a motion dated June 17, 2003, alleging that I was not able to enforce the said Writ. At this point I wish to clarify the matter. It is error to state that I failed to enforced the writ, **as in fact it was immediately acted upon only the enforcement was fruitless as no payment was made and nothing**

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[14] *Hon. Barbers v. Judge Laguio, Jr.*, 404 Phil. 443, 475 (2001).

[15] *Spouses Lorena v. Judge Encomienda*, 362 Phil. 248, 257 (1999).

leviable was in defendant's premises. I would admit that I failed to render a report of my proceedings on time but not that I failed or refused to act on the Writ of execution which is one of my sworn duties as a sheriff;[16]

Although he claimed that he acted on the writ but the defendant had no properties that could be levied upon, his delay in filing the required report to properly inform the court and the parties concerned of the problem in the execution of the judgment, and the continued non-enforcement of the writ constrained the plaintiff's counsel to request the court's appointment of a special sheriff to serve the *alias* writ of execution.

In Civil Case No. 19696, Sheriff Dizon acknowledged that he failed and refused to implement the writ of replevin, but alleged that there was a threat to his life, and plaintiff failed to provide him with police assistance. He stated in his comment that:

8. The very reason why I relented in taking possession of said vehicle despite the prodding of plaintiff's representative was due to the fact that said vehicle was located in a company compound and heavily guarded by armed security men the number of which increased more upon learning of my purpose. While I was armed with a court order and with a sincere desire to accomplish my work, what can I do in the presence of security guards armed with shotguns and sidearms who in blind obedience would pull the trigger at a mere wink of an eye of their employer? Police assistance, as I have already told plaintiff's representative beforehand, was necessary in such a situation but there was none. x x x.[17]

As regards Civil Case No. 19171, Sheriff Dizon exhibited imprudence in his duty of putting the attached properties in his safekeeping. He transferred their actual possession to the plaintiff, in violation of the rule requiring him to safely keep them in his custody. The alleged lack of space in the court to store the attached properties and failure of plaintiff to defray the expenses for their storage in a bonded warehouse are not sufficient

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[16] *Rollo*, p. 56.

[17] *Id.* at 57.

justifications for his action. Sheriff Dizon should have sought prior permission from the court before depositing them at the plaintiff's house. Needless to say, Sheriff Dizon failed to live up to the exacting standard required of his office. In enforcing the writ, he exposed his lack of impartiality. And yet again, Sheriff Dizon did not submit a timely report on the proceedings to the court.

Lastly, in Civil Case No. 19438, Sheriff Dizon failed to serve the summons despite the lapse of more than six months from its issuance. Granting that plaintiff's counsel allegedly advised him to hold in abeyance the service of summons pending the summons in other civil cases which needed to be served in the same area, Sheriff Dizon had no discretion or authority to withhold the service of the summons in Civil Case No. 19438, thus, compromising his duty as sheriff who was responsible for the speedy and efficient service of all court processes.

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[18]

Being the frontline representative of the justice system, a sheriff must always exert every effort and, indeed, consider it his bounden duty, to perform his duties in order to maintain public trust. He must see to it that the final stage in the litigation process — the execution of the judgment — is carried out with no unnecessary delay, in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely delayed due to his neglect of duty renders it inutile; and worse,

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[18] *Mendoza v. Sheriff IV Tuquero*, 412 Phil. 435, 441-442; *Smith Bell and Co. v. Saur*, 185 Phil. 469, 472 (1980).

the parties who are prejudiced thereby tend to condemn the entire judicial system.[19]

The Court has said time and again that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.[20] Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible.[21] There is even no need for the litigants to "follow up" a writ's implementation.[22]

The failure of Sheriff Dizon to carry out what is a purely ministerial duty cannot be justified. The procrastination displayed by him, resulting in the long delay in the execution of court judgments, is truly deplorable. Clearly, Sheriff Dizon failed to observe the degree of dedication to the duties and responsibilities required of him as a sheriff. Through his failure, he breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. The court cannot countenance such dereliction of duty, as it erodes the faith and trust of the citizenry in the judiciary. As an implementing officer of the court, Sheriff Dizon should set the example by faithfully observing, and not brazenly disregarding, the Rules.

By his actuations, Sheriff Dizon displayed conduct short of the stringent standards required of Court employees. He is guilty of simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected

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[19] *Aquino v. Martin*, 458 Phil. 76, 82 (2003).

[20] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, 13 February 2006, 482 SCRA 265, 274-275.

[21] *Aquino v. Lavadia*, 417 Phil. 770, 776 (2001).

[22] *Id.*

of him, and signifies a disregard of a duty resulting from carelessness or indifference.[23] Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

In *Ayo v. Judge Violago-Isnani*,[24] the Court found respondent clerk of court guilty of simple neglect of duty for causing the delay in the implementation of the writ of execution and suspended him from office for one (1) month and one (1) day. In *Alvarez, Jr. v. Martin*,[25] the sheriff, declared guilty of "failure/refusal to perform official duty" for failing to implement a writ of execution, was suspended for three (3) months without pay. The same sheriff, in *Aquino v. Martin*, was fined ₱10,000.00 for dereliction of duty when he failed to implement writs of execution in several civil cases.[26]

In this case, Sheriff Dizon has been an accountable officer of the court for more than 20 years and is, thus, presumed to have imbibed at least the fundamental rules and principles in implementing the writ of execution. However, considering that this is the first time he is found guilty of an offense in his almost twenty-five years of service in the judiciary, the Court is inclined to grant him a certain leniency without being unmindful of the fact that he had breached the provisions of the Rules of Court. For this reason, the Court is wont to impose the penalty of two (2) months' suspension; but, given the intervening event of Sheriff Dizon's death on 12 March 2008, a fine in the amount of Twenty Thousand Pesos (₱20,000.00) would suffice.

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[23] *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720-721 (2001).

[24] 368 Phil. 19, 28 (1999).

[25] 458 Phil. 85, 96 (2003).

[26] *Supra* note 19 at 84; *Re: Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided Over by Hon. Ernesto R. Gutierrez,* A.M. No. RTJ-05-1950, 13 February 2006, 482 SCRA 310, 324.

WHEREFORE, respondent Sheriff Ricardo L. Dizon is hereby found guilty of simple neglect of duty, and a *FINE* of Twenty Thousand Pesos (₱20,000.00) is imposed upon him, to be deducted from his retirement benefits. Let a copy of this decision be attached to his personal records.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-08-2512. August 11, 2008]
(Formerly OCA I.P.I. No. 07-8-193-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **Mrs. FELICITAS T. MARCELO, former Clerk of Court, Municipal Circuit Trial Court, Ramon-San Isidro, Isabela,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; MUST BE INDIVIDUALS OF HONESTY, PROBITY AND COMPETENCE AND ARE EXPECTED TO POSSESS HIGH DEGREE OF DISCIPLINE AND EFFICIENCY; AS CUSTODIANS OF THE COURT'S FUNDS AND REVENUES, RECORDS, PROPERTY AND PREMISES, THEY ARE LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF SAID FUNDS AND PROPERTY.—** The safekeeping of public funds entrusted to court personnel is essential to an orderly administration of justice and no claim of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds.

Time and again, the Court has pronounced that the administration of justice is circumscribed with a heavy burden of responsibility. Everyone, from the presiding judge to the lowliest clerk must live up to the strictest standards of public service. Clerks of Court, in particular, must be individuals of honesty, probity and competence and they are expected to possess a high degree of discipline and efficiency. Apart from being the chief administrative officers of their respective posts, clerks of court are custodians of the court's funds and revenues, records, property and premises. Hence, they are liable for any loss, shortage, destruction, or impairment of said funds or property. They are judicial officers entrusted to perform delicate functions with regard to the collection of legal fees and are expected to correctly and effectively implement regulations, such that even undue delay in the remittances of amounts collected by them constitutes misfeasance, at the very least.

2. ID.; ID.; ID.; ID.; ID.; DISHONESTY AND GRAVE MISCONDUCT; RESPONDENT'S OFFENSES CLEARLY FALL SHORT OF THE EXACTING STANDARDS EXPECTED OF CLERKS OF COURT; THE FAILURE OF A PUBLIC OFFICIAL TO TURN OVER CASH DEPOSITED WITH HIM ON TIME CONSTITUTES NOT JUST GROSS NEGLIGENCE IN THE PERFORMANCE OF DUTY BUT DISHONESTY IF NOT MALVERSATION.— Felicitas, in her Comment dated May 21, 2004, admitted that her cashbook was not updated, and that she did not immediately deposit her collections. She also asked for forgiveness for her failure to comply with SC Circulars No. 32-93 and No. 50-95 regarding the monthly submission of reports, promising only that she would comply with the same from then on. Felicitas' offenses clearly fall short of the exacting standards expected of court personnel, especially Clerks of Court. The failure of a public official to turn over cash deposited with him on time constitutes not just gross negligence in the performance of duty, but gross dishonesty if not malversation, which are grave offenses under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service and which carry the penalty of dismissal from the service even for the first offense. In numerous cases, the Court imposed the penalty of dismissal on clerks of court who failed to deposit fiduciary funds in authorized government depositories as required by rules and regulations.

3. ID.; ID.; ID.; ID.; ID.; IN VIEW OF RESPONDENT'S DISABILITY RETIREMENT TOGETHER WITH THE PRESENCE OF MITIGATING CIRCUMSTANCES, SUCH AS LENGTH OF SERVICE, FIRST OFFENSE, ADMISSION OF INFRACTION AND PHYSICAL ILLNESS, THE IMPOSITION OF FINE IS SUFFICIENT PENALTY FOR THE OFFENSE SHE COMMITTED.— Felicitas' conduct would have warranted the maximum penalty of dismissal, if not for the fact that she has already retired from the service; but in view of her disability retirement together with the presence of mitigating circumstances, such as length of service, first offense, admission of infraction and physical illness, the imposition of fine is sufficient penalty for the offense she committed. As noted by the OCA, Felicitas has served the judiciary for more than 26 years, having assumed office as Court Stenographer I on June 1, 1979. This is her first offense. She admitted her shortcomings, asked forgiveness from the Court, and expressed her willingness to have the shortage deducted from her leave credits. Although her physical condition worsened only after the investigation, as her Comment on the initial audit dated May 21, 2004 did not mention such circumstance, it also cannot be denied, that thereafter, she suffered a stroke as confirmed by the letter of Judge Pine to the OCA, saying that Felicitas had gone on leave because of said condition, which rendered her practically incapable to discharge her duties. Felicitas' pictures are also mute testaments to her present ailment. Considering the foregoing, the Court finds the recommended penalty of ₱20,000.00 to be deducted from her retirement benefits appropriate in this case.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

The instant administrative case stems from the audit conducted on the books of account of Felicitas T. Marcelo (Felicitas), former Clerk of Court, Municipal Circuit Trial Court (MCTC), Ramon-San Isidro, Isabela.

In the initial report of the Court Management Office (CMO), Office of the Court Administrator (OCA) on the books of account

of Felicitas as of April 30, 2004, shortages in the total amount of ₱76,049.45 were discovered.[1] Felicitas, in her comment dated May 21, 2004, admitted that her cashbook was not updated and that she was not able to immediately deposit her collections, which was probably the reason why her collections and remittances did not tally. She also apologized for her failure to comply with Supreme Court (SC) Circular Nos. 32-93 and 50-95 regarding the submission of monthly reports of collections.[2] In a Memorandum by the OCA dated March 18, 2005, Felicitas was directed to explain in writing why she should not be administratively charged with failure to strictly comply with the circulars issued by the Court.[3] In an undated letter to the OCA, Felicitas requested an extension of 15 days within which to comply, alleging that she was hospitalized on February 24-26, March 17-19 and April 29 to May 1, 2005.[4] The request was granted by the OCA. However no compliance or explanation was subsequently submitted by Felicitas.[5]

In a letter dated January 13, 2006, Acting Presiding Judge Renato P. Pine informed the OCA that Felicitas had gone on leave because she suffered a stroke, rendering her incapable of discharging her duties and responsibilities. He also discovered that there were missing records of cases. Thus, he requested that an immediate audit of Felicitas's accountabilities, including court exhibits and equipment, be conducted.[6]

On January 10, 2006, Felicitas filed an application for disability retirement under Republic Act No. 8291[7] effective January 2,

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[1] Broken down as follows: (a) Judiciary Development Fund amounting to ₱7,133.00; (2) General Fund of ₱456.00; and (c) Fiduciary Fund amounting to ₱68,460.25; *rollo*, p. 1.

[2] *Rollo*, pp. 2, 25.

[3] See *rollo*, p. 1.

[4] *Id.* at 2, 31.

[5] *Id.* at 2.

[6] *Id.* at 2-3.

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

2006, which the Court's Third Division approved on June 28, 2006.[8]

On December 3, 2006, Felicitas's husband Gaudencio Marcelo (Gaudencio) wrote the Court requesting partial release of his wife's disability retirement benefits. The Court replied that the clearance could not be issued at that time because the financial audit on Felicitas's accounts was not yet completed.[9]

On August 2, 2007, the OCA submitted its final report dated July 23, 2007 on the financial audit conducted on all the records of Felicitas for the period May 2004 to March 31, 2005, and it was established that Felicitas had incurred a total shortage of **₱136,699.25**, broken down as follows: (1) Judiciary Development Fund (JDF) = ₱27,816.00; (2) General Fund = ₱456.00; (3) Special Allowance for the Judiciary (SAJ) Fund = ₱21,967.00, and; (4) Fiduciary Fund = ₱86,460.25.[10]

In a letter to the CMO dated March 8, 2007, Gaudencio requested that the shortage be deducted from his wife's leave credits and other benefits.[11] The equivalent money value of Felicitas's leave credits amounts to **₱336,090.59** as reported by the Finance Division of the Court's Fiscal Management Office.[12]

In the Memorandum dated July 23, 2007, the OCA recommended that Felicitas be dismissed from the service for gross dishonesty and grave misconduct with forfeiture of all her retirement benefits, except accrued leave credits, and that the amount of ₱136,699.25 be deducted from her terminal leave pay.[13] In the Resolution dated September 10, 2007, the Court

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[8] Per verification with the Retirement Division, Office of the Court Administrator, Office of Administrative Services. See also *rollo*, p. 3.

[9] *Rollo*, p. 3.

[10] *Id.* at 1, 4, 7.

[11] *Id.* at 6.

[12] Computed as follows: 392.250 days (no. of accumulated leave) x ₱17,922.00 (highest monthly salary) x .0478087 (constant factor) = ₱336,090.59, *id.* at 6.

[13] *Id.* at 6.

directed Felicitas to show cause why she should not be dismissed as recommended by the OCA.[14]

In a letter dated October 18, 2007 addressed to Clerk of Court Lucita Abjelina-Soriano, Guadencio, on behalf of his wife, stated that they were willing to have the shortage of ₱136,699.25 deducted from her accrued leave credits, but prayed that his wife's other benefits not be forfeited.[15] Gaudencio attached the letters of Felicitas to Land Bank-Santiago City Branch dated May 20, 2004 and July 20, 2005 asking confirmation of the deposits she made in the court's Savings Account; Felicitas's Comment on the Audit Observation dated May 21, 2004; and a list of cases which were dismissed and which were allegedly included in the cash accountability of Felicitas.[16]

Gaudencio also sent these letters: one addressed to Chief Justice Reynato S. Puno, dated October 18, 2007, reiterating his request that the retirement benefits of his wife be not forfeited, since his wife had been bedridden since September 2005, and they were only relying on her retirement benefits;[17] and another addressed to Atty. Soriano dated October 25, 2007 stating that his wife had been trying to answer and explain her side, but due to her sickness, she was not able to do so in writing.[18] The Court on January 16, 2008 referred the letters of Gaudencio and its attachments to the OCA for its evaluation, report and recommendation.[19]

Gaudencio sent another letter to the Chief Justice dated December 3, 2007, regarding his request for the immediate release of his wife's benefits and stating their conformity to the deduction of her accountability from her earned leave credits.[20] The OCA,

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[14] *Rollo*, pp. 8, 10.

[15] *Id.* at 11-12.

[16] *Id.* at 13-17.

[17] *Id.* at 20.

[18] *Id.* at 30.

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

[20] *Rollo*, p. 42.

in its Memorandum dated January 2, 2008, replied that while the disability retirement of Felicitas was approved in June 2006, her clearance had to be deferred pending the resolution of the Court on the financial audit report.[21]

In a letter to Atty. Soriano dated January 24, 2008, Gaudencio informed the Court that there were cases that had been dismissed, the corresponding bailbonds of which, totaling ₱13,400.00, had been included in the accountabilities of Felicitas. He prayed that said amount be deducted from his wife's accountabilities and that she not be dismissed from the service.[22] In a letter of the same date addressed to the Chief Justice, Gaudencio prayed that, for humanitarian reasons, his wife's acts be pardoned by the Court. He averred that his wife first became ill in 1994 and started taking medicines from such time until March 2005 when she had her second stroke; that because of her illness, she got delayed in submitting her reports; and that on September 2005, his wife had her third stroke, which left half of her body paralyzed.[23] Attached to said letter were pictures of his bedridden wife.

In a Resolution dated February 20, 2008, the Court again referred the instant case to the OCA for its evaluation, report and recommendation.[24]

In its Memorandum dated March 28, 2008, the OCA found Felicitas guilty of dishonesty and grave misconduct for incurring shortages in the court's funds. However in view of the mitigating circumstances in her favor, it recommended the imposition of a fine in lieu of dismissal, reasoning as follows:

> It bears emphasis that Mrs. Felicitas Marcelo has devoted a considerable number of years in her life in public service. In fact, prior to her application for disability retirement benefits on January 2, 2006, she had been with the judiciary for a period of 26

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[21] *Id.* at 40, 42.

[22] *Id.* at 48.

[23] *Id.* at 61.

[24] *Id.* at 66.

years and 7 months, having started as Court Stenographer I on June 1, 1979. Further, records show that she is just a first time offender and the amount misappropriated by her was not considerably huge as to prejudice the Court. While it is true that the amount misappropriated should not be made the basis of the penalty imposed, the same could be considered in the instant case more so that Mrs. Marcelo at present is suffering form an illness due to stroke. As a matter of fact, half her body is already paralyzed. The photographs sent by her husband are mute evidence of her weak condition and physical suffering. While the Court has remained vigilant in eradicating the so-called rotten eggs in its roster, it will not hesitate to temper the penalty with compassion and for humanitarian reasons. Be that as it may, Mrs. Marcelo should not be totally exonerated from her offense. The fact remains that she committed an offense prejudicial to the orderly administration of justice. Instead of imposing the ultimate penalty of dismissal for grave misconduct and dishonesty, a fine in the amount of ₱20,000.00 is fair and reasonable.[25]

The OCA then recommended that:

1. the amount of One hundred thirty six thousand six hundred ninety nine and 25/100 (136, 699.25) be DEDUCTED from the terminal leave pay of Mrs. Felicitas Marcelo, former Clerk of Court, MCTC, Ramon-San Isidro, Isabela to be applied to her accountabilities and to release the balance to her if there be any;
2. she be FINED in the amount of ₱20,000.00 for gross dishonesty and grave misconduct, to be deducted from her retirement benefits and
3. the Employee Welfare and Benefits Division be directed to compute and to immediately release whatever benefits she is entitled to receive.[26]

The Court finds the recommendations to be well taken.

The safekeeping of public funds entrusted to court personnel is essential to an orderly administration of justice and no claim

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[25] *Rollo*, p. 72.

[26] *Id.*

of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds.[27]

Time and again, the Court has pronounced that the administration of justice is circumscribed with a heavy burden of responsibility. Everyone, from the presiding judge to the lowliest clerk must live up to the strictest standards of public service.[28] Clerks of Court, in particular, must be individuals of honesty, probity and competence and they are expected to possess a high degree of discipline and efficiency.[29] Apart from being the chief administrative officers of their respective posts, clerks of court are custodians of the court's funds and revenues, records, property and premises.[30] Hence, they are liable for any loss, shortage, destruction, or impairment of said funds or property.[31] They are judicial officers entrusted to perform delicate functions with regard to the collection of legal fees and are expected to correctly and effectively implement regulations, such that even undue delay in the remittances of amounts collected by them constitutes misfeasance, at the very least.[32]

Felicitas, in her Comment dated May 21, 2004, admitted that her cashbook was not updated, and that she did not immediately

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[27] *Re: Financial Audit On the Accountabilities of Restituto A. Tabucon, Jr.,* A.M. No. 04-8-195-MCTC, August 18, 2005, 467 SCRA 246, 250.

[28] *Re: Withholding of other Emoluments of the following Clerks of Court: Elsie C. Remoroza, Elena P. Reformado, Eugenio Sto. Tomas, Maura D. Campaño, Eleanor D. Flores, and Jesusa P. Benipayo,* A.M. No. 01-4-133-MTC, August 26, 2003, 409 SCRA 574, 581-582.

[29] *Soria v. Oliveros*, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410, 427; *Gutierrez v. Quitalig*, A.M. No. P-02-1545, April 2, 2003, 400 SCRA 391, 399; *Supra* notes 26 & 27.

[30] *Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga,* A.M. No. P-05-1989, October 20, 2005, 473 SCRA 456, 462; *Re: Report on the Financial Audit on the Books of Accounts of Adelina R. Garrovillas,* A.M. No. P-04-1894, August 9, 2005, 466 SCRA 59.

[31] *Misajon v. Feranil*, A.M. No. P-02-1565, October 18, 2004, 440 SCRA 315, 328; *supra* note 29.

[32] *Gutierrez, supra* note 28.

deposit her collections. She also asked for forgiveness for her failure to comply with SC Circulars No. 32-93 and No. 50-95 regarding the monthly submission of reports, promising only that she would comply with the same from then on.[33]

Felicitas' offenses clearly fall short of the exacting standards expected of court personnel, especially Clerks of Court. The failure of a public official to turn over cash deposited with him on time constitutes not just gross negligence in the performance of duty, but gross dishonesty if not malversation, which are grave offenses under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service and which carry the penalty of dismissal from the service even for the first offense.[34] In numerous cases, the Court imposed the penalty of dismissal on clerks of court who failed to deposit fiduciary funds in authorized government depositories as required by rules and regulations.[35]

Felicitas' conduct would have warranted the maximum penalty of dismissal, if not for the fact that she has already retired from the service;[36] but in view of her disability retirement together with the presence of mitigating circumstances, such as length of service, first offense, admission of infraction and physical illness,[37] the imposition of fine is sufficient penalty for the offense she committed.

As noted by the OCA, Felicitas has served the judiciary for more than 26 years, having assumed office as Court Stenographer

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[33] *Rollo*, p. 25.

[34] *Supra* note 26.

[35] *Soria*, *supra* note 28.

[36] See *Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga*, A.M. No. P-05-1989, October 20, 2005.

[37] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, all of the Municipal Trial Court-OCC, Guagua, Pampanga,* A.M. No. P-06-2243, September 26, 2006, 503 SCRA 52, 62-63; *supra* note 27.

I on June 1, 1979.[38] This is her first offense. She admitted her shortcomings, asked forgiveness from the Court, and expressed her willingness to have the shortage deducted from her leave credits. Although her physical condition worsened only after the investigation, as her Comment on the initial audit dated May 21, 2004 did not mention such circumstance, it also cannot be denied, that thereafter, she suffered a stroke as confirmed by the letter of Judge Pine to the OCA, saying that Felicitas had gone on leave because of said condition, which rendered her practically incapable to discharge her duties. Felicitas' pictures are also mute testaments to her present ailment. Considering the foregoing, the Court finds the recommended penalty of ₱20,000.00[39] to be deducted from her retirement benefits appropriate in this case.

WHEREFORE, the Court finds Felicitas T. Marcelo, former Clerk of Court of the Municipal Circuit Trial Court, Ramon-San Isidro, Isabela, *GUILTY* of dishonesty and grave misconduct for which she is *FINED* ₱20,000.00, which amount shall be deducted from her retirement benefits. The amount of ₱136,699.25 shall also be *DEDUCTED* from the terminal leave pay of Felicitas T. Marcelo to be applied to her accountabilities, and the balance thereof, to be released to her, if there be any. The Employee Welfare and Benefits Division is *DIRECTED* to compute and to immediately release whatever benefits she is entitled to receive.

SO ORDERED.

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

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[38] See *Rollo*, p. 3.

[39] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan,* A.M. No. P-02-1641, January 20, 2004, 420 SCRA 150, 161.

THIRD DIVISION

[G.R. No. 162886. August 11, 2008]

HEIRS OF THE DECEASED SPOUSES VICENTE S. ARCILLA and JOSEFA ASUNCION ARCILLA, namely: Aida Arcilla Alandan, Rene A. Arcilla, Oscar A. Arcilla, Sarah A. Arcilla, and Nora A. Arcilla, now deceased and substituted by her son Sharmy Arcilla, represented by their attorney-in-fact, SARAH A. ARCILLA, *petitioners, vs.* **MA. LOURDES A. TEODORO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; WHILE THE REQUIREMENT IS MANDATORY, IT MUST NOT BE INTERPRETED TOO LITERALLY AND THUS DEFEAT THE OBJECTIVE OF PREVENTING THE UNDESIDERABLE PRACTICE.—** In *Gabionza v. Court of Appeals*, this Court has held that Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible. The same guideline still applies in interpreting what is now Section 5, Rule 7 of the 1997 Rules of Civil Procedure. The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally settled that litigation is not merely a game of technicalities. 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. Moreover, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just

determination of his cause free from the constraints of technicalities. It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirement must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping. In *Uy v. Land Bank of the Philippines*, the Court ruled, thus: The admission of the petition after the belated filing of the certification, therefore, is not unprecedented. In those cases where the Court excused non-compliance with the requirements, there were special circumstances or compelling reasons making the strict application of the rule clearly unjustified. In the case at bar, the apparent merits of the substantive aspects of the case should be deemed as a "special circumstance" or "compelling reason" for the reinstatement of the petition. x x x

2. ID.; ID.; ID.; RELAXATION OF THE RULES IS JUSTIFIED IN CASE AT BAR; APPARENT MERIT OF THE SUBSTANTIVE ASPECT OF THE PETITION, CONSIDERED.— In the instant case, the Court finds that the lower courts did not commit any error in proceeding to decide the case on the merits, as herein respondent was able to submit a certification of non-forum shopping. More importantly, the apparent merit of the substantive aspect of the petition for land registration filed by respondent with the MTC coupled with the showing that she had no intention to violate the Rules with impunity, as she was the one who invited the attention of the court to the inadvertence committed by her counsel, should be deemed as special circumstances or compelling reasons to decide the case on the merits. In addition, considering that a dismissal contemplated under Rule 7, Section 5 of the Rules of Court is, as a rule, a dismissal without prejudice, and since there is no showing that respondent is guilty of forum shopping, to dismiss respondent's petition for registration would entail a tedious process of re-filing the petition, requiring the parties to re-submit the pleadings which they have already filed with the trial court, and conducting anew hearings which have already been done, not to mention the expenses that will be incurred by the parties in re-filing of pleadings and in the re-conduct of hearings. These would not be in keeping with the judicial policy of just, speedy and inexpensive disposition of every action and proceeding.

3. ID.; ID.; ID.; THE CERTIFICATE OF FORUM SHOPPING EXECUTED IN A FOREIGN COUNTRY IS NOT COVERED BY SECTION 24, RULE 132 OF THE RULES OF COURT.— There is no merit to petitioners' contentions that the verification and certification subsequently submitted by respondent did not state the country or city where the notary public exercised her notarial functions; and that the MTC simply concluded, without any basis, that said notary public was from Maryland, USA; that even granting that the verification and certification of non-forum shopping were notarized in the USA, the same may not be deemed admissible for any purpose in the Philippines for failure to comply with the requirement of Section 24, Rule 132 of the Rules of Court that the notarized document must be accompanied by a certificate issued by an officer in the foreign service of the Philippines who is stationed in the country in which a record of the subject document is kept, proving or authenticating that the person who notarized the document is indeed authorized to do so and has custody of the same.

4. ID.; EVIDENCE; PROOF OF OFFICIAL RECORD; THE REQUIRED CERTIFICATION OF AN OFFICER IN THE FOREIGN OFFICE UNDER SECTION 24 REFERS ONLY TO WRITTEN OFFICIAL ACTS OR RECORDS OF THE OFFICIAL ACTS OF THE SOVEREIGN AUTHORITY, OFFICIAL BODIES AND TRIBUNALS, AND PUBLIC OFFICERS OF THE PHILIPPINES OR OF A FOREIGN COUNTRY.— The ruling of the Court in *Lopez v. Court of Appeals*, cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in 1989. The rule applied in *Lopez,* which was decided prior to the effectivity of the amended Rules of Evidence, was Section 25, Rule 132. When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase "*An official record or an entry therein,*" which was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19.*" Thus, Section 24, Rule 132 of the Rules of Court now reads as follows: Sec. 24. *Proof of official record.* — **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication

thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. Section 19(a) of the same Rule provides: Sec. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private. Public documents are: **(a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;** (b) Documents acknowledged before a notary public except last wills and testaments; and (c) Public records, kept in the Philippines, of private documents required by law to be entered therein. All other writings are private. It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19(a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19. In *Lopez*, the requirements of then Section 25, Rule 132 were made applicable to all public or official records without any distinction because the old rule did not distinguish. However, in the present rule, it is clear under Section 24, Rule 132 that its provisions shall be made applicable only to the documents referred to under paragraph (a), Section 19, Rule 132.

5. **ID.; ID.; FINDINGS OF FACT; RULE; EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR.—** Settled is the rule that the trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court. There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or

conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. However, petitioners failed to show that any of the exceptions is present in the instant case to warrant a review of the findings of fact of the lower courts.

6. **ID.; ID.; PETITIONER'S BARE DENIALS OF THE CONTENTS OF THE SUBJECT DOCUMENTS WILL NOT SUFFICE TO OVERCOME THE PRESUMPTION OF THEIR REGULARITY CONSIDERING THAT THEY ARE ALL NOTARIZED.—** Petitioners' bare denials of the contents of the subject documents will not suffice to overcome the presumption of their regularity considering that they are all notarized. To overthrow such presumption of regularity, the countervailing evidence must be clear, convincing and more than merely preponderant, which petitioners failed to present. An examination of the subject Extrajudicial Settlement of Estate clearly shows that the disputed lot forms part of the properties adjudicated in favor of Pacifico Arcilla, respondent's predecessor-in-interest. Moreover, petitioners themselves admit that the Extrajudicial Settlement being referred to in the Affidavit of Quitclaim executed by petitioner and her co-heirs is the Extrajudicial Settlement of the Estate of Jose Arcilla and not of Vicente Arcilla. An examination of the Affidavit of Quitclaim shows that the reference made therein with respect to the date of execution of the said Extrajudicial Settlement as well as the notary public who acknowledged the same and the Document Number, Page Number, Book Number and Series Number all coincide with those appearing in the document evidencing the Extrajudicial Settlement of the Estate of Jose Arcilla. Hence, what has been waived by petitioners is their right, if any, to the properties mentioned in the said Affidavit of Quitclaim, which includes the presently disputed lot.

7. **ID.; ID.; PETITIONER'S EXECUTION OF THE SUBJECT AFFIDAVIT OF QUITCLAIM IS PROOF THAT THEY HAVE RATIFIED THE CONTENTS OF THE DISPUTED EXTRAJUDICIAL SETTLEMENT.—** Petitioners posit that they are not bound by the subject Extrajudicial Settlement because they did not participate in nor did they sign the document evidencing such settlement and that their mother who signed on their behalf was not, in fact, authorized to do so. However, the Court agrees with the ruling of the RTC that the Extrajudicial Settlement is a public document, the same having been notarized; that such document is entitled to full faith and credit in the absence of competent evidence showing that its execution was tainted with defects and irregularities which would warrant a declaration of nullity; that in the absence of evidence showing that the person who signed in behalf of herein petitioners was, in fact, not authorized to do so, the presumption that she had the authority, as stated in the Extrajudicial Settlement, remains undisturbed. Moreover, petitioners' execution of the subject Affidavit of Quitclaim is proof that they have ratified the contents of the disputed Extrajudicial Settlement.

8. **ID.; ID.; THE LAW DOES NOT REQUIRE THAT THE PARTIES TO A DOCUMENT NOTARIZED BY A NOTARY PUBLIC SHOULD BE RESIDENTS OF THE PLACE WHERE THE SAID DOCUMENTS IS ACKNOWLEDGED OR THAT THEY AFFIX THEIR SIGNATURE IN THE PRESENCE OF THE NOTARY PUBLIC; WHAT IS NECESSARY IS THAT PERSONS WHO SIGNED A NOTARIZED DOCUMENT ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE THE NOTARY PUBLIC.—** Petitioners' claim that the Affidavit of Quitclaim is null and void on the ground that the signatories thereto are not residents of Virac, Catanduanes and that they affixed their signature in places other than Virac, Catanduanes where they supposedly acknowledged the said document, is not persuasive. The Court finds no error in the finding of the MTC, as affirmed by the CA, that the execution of the subject Affidavit of Quitclaim or the signatures of the affiants appearing therein were never contested nor raised as an issue and that petitioner Sarah Arcilla herself acknowledged her own signature in the said Affidavit. In any event, the law does not require that parties to a document notarized by a notary public should

be residents of the place where the said document is acknowledged or that they affix their signature in the presence of the notary public. What is necessary is that the persons who signed a notarized document are the very same persons who executed and personally appeared before the notary public in order to attest to the contents and truth of what are stated therein. In the instant case, it is established that, with the exception of petitioner Rene Arcilla, all of herein petitioners, including their now deceased mother Josefa and sister Nora, executed and personally acknowledged before the notary public the subject Affidavit of Quitclaim. Hence, aside from Rene, the said Affidavit of Quitclaim is valid and binding on all the petitioners. With respect to Rene, petitioner Oscar Arcilla, acting as his attorney-in-fact, signed the document on the former's behalf. However, settled is the rule that: A member of the bar who performs an act as a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him. The acts of the affiants cannot be delegated to anyone for what are stated therein are facts of which they have personal knowledge. They should swear to the document personally and not through any representative. Otherwise, their representative's name should appear in the said documents as the one who executed the same. That is the only time the representative can affix his signature and personally appear before the notary public for notarization of the said document. Simply put, the party or parties who executed the instrument must be the ones to personally appear before the notary public to acknowledge the document. Thus, the herein subject Affidavit of Quitclaim may not be binding on Rene. Nonetheless, with or without Rene's participation in the quitclaim, respondent's ownership of the subject lots has been established by preponderance of evidence, as unanimously found by the MTC, the RTC and the CA.

9. **CIVIL LAW; PROPERTY; OWNERSHIP; PETITIONER'S PHYSICAL OCCUPATION OF THE COMMERCIAL BUILDING WHICH THEY ERECTED ON THE DISPUTED PROPERTY DOES NOT NECESSARILY PROVE THEIR OWNERSHIP OF THE SUBJECT LOTS; THE AFFIDAVIT OF QUITCLAIM AND DEED OF SALE IN FAVOR OF RESPONDENT ESTABLISH RESPONDENT'S OWNERSHIP OVER THE DISPUTED PROPERTY.—** Petitioners' physical occupation of the commercial building which they erected on

the disputed property does not necessarily prove their ownership of the subject lots. This Court has held that: ownership and possession are two entirely different legal concepts. Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states 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 clearly be inferred. **Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance. Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed lot after the execution of the deed of sale in her favor because she was already able to perfect and complete her ownership of and title over the subject property.** The Extrajudicial Settlement of Estate in favor of Pacifico, respondent's predecessor-in-interest, the Affidavit of Quitclaim and the Deed of Sale in favor of respondent establish respondent's ownership over the disputed property.

APPEARANCES OF COUNSEL

Ocampo and Ocampo for petitioners.
Rene V. Sarmiento and Associates for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the September 12, 2003 Decision[1] of the Court of Appeals (CA) and its Resolution[2] dated March 24, 2004 in CA-G.R. SP No. 72032.

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[1] Penned by Justice Buenaventura J. Guerrero with the concurrence of Justices Andres B. Reyes, Jr. and Regalado E. Maambong; *rollo*, p. 8.

[2] *Id.* at 95.

The facts of the case are as follows:

On December 19, 1995, Ma. Lourdes A. Teodoro (respondent) initially filed with the Regional Trial Court (RTC) of Virac, Catanduanes an application for land registration of two parcels of land located at Barangay San Pedro, Virac, Catanduanes. The lots, with an aggregate area of 284 square meters, are denominated as Lot Nos. 525-A and 525-B, Csd.-05-010483-D of the Virac Cadastre. Respondent alleged that, with the exception of the commercial building constructed thereon, she purchased the subject lots from her father, Pacifico Arcilla (Pacifico), as shown by a Deed of Sale[3] dated December 9, 1966, and that, prior thereto, Pacifico acquired the said lots by virtue of the partition of the estate of his father, Jose Arcilla evidenced by a document entitled Extrajudicial Settlement of Estate.[4] Respondent also presented as evidence an Affidavit of Quit-Claim[5] in favor of Pacifico, executed by herein petitioners as Heirs of Vicente Arcilla (Vicente), brother of Pacifico.

On February 7, 1996, the case was transferred to the Municipal Trial Court (MTC) of Virac, Catanduanes in view of the expanded jurisdiction of said court as provided under Republic Act No. 7691.[6]

In their Opposition dated August 19, 1996, petitioners contended that they are the owners *pro-indiviso* of the subject lots including the building and other improvements constructed thereon by virtue of inheritance from their deceased parents, spouses Vicente and Josefa Arcilla; contrary to the claim of respondent, the lots in question were owned by their father, Vicente, having purchased the same from a certain Manuel

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[3] Annex "I" to Petition, CA *rollo*, p. 114.

[4] Annex "H" to Petition, *id.* at 109.

[5] Annex "J" to Petition, *id.* at 115.

[6] Entitled: An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts , Amending for the Purpose *Batas Pambansa Blg*. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980."

Sarmiento sometime in 1917; Vicente's ownership is evidenced by several tax declarations attached to the record; petitioners and their predecessors-in-interest had been in possession of the subject lots since 1906. Petitioners moved to dismiss the application of respondent and sought their declaration as the true and absolute owners *pro-indiviso* of the subject lots and the registration and issuance of the corresponding certificate of title in their names.

Subsequently, trial of the case ensued.

On March 20, 1998, herein respondent filed a Motion for Admission[7] contending that through oversight and inadvertence she failed to include in her application, the verification and certificate against forum shopping required by Supreme Court (SC) Revised Circular No. 28-91 in relation to SC Administrative Circular No. 04-94.

Petitioners filed a Motion to Dismiss Application[8] on the ground that respondent should have filed the certificate against forum shopping simultaneously with the petition for land registration which is a mandatory requirement of SC Administrative Circular No. 04-94 and that any violation of the said Circular shall be a cause for the dismissal of the application upon motion and after hearing.

Opposing the motion to dismiss, respondents asserted that the petitioners' Motion to Dismiss Application was filed out of time; respondent's failure to comply with SC Administrative Circular No. 04-94 was not willful, deliberate or intentional; and the Motion to Dismiss was deemed waived for failure of petitioners to file the same during the earlier stages of the proceedings.

On July 19, 1999, the MTC issued an Order[9] denying petitioners' Motion to Dismiss Application.

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[7] Annex "D" to Petition, CA *rollo*, p. 99.

[8] Annex "E" to Petition, *id.* at 102.

[9] Annex "G" to Petition, *id.* at 107.

On June 25, 2001, the MTC rendered a Decision[10] the dispositive portion of which reads as follows:

> NOW THEREFORE, and considering all the above premises, the Court finds and so holds that Applicant MA. LOURDES A. TEODORO, having sufficient title over this land applied for hereby renders judgment, which should be, as it is hereby CONFIRMED and REGISTERED in her name.
>
> IT IS SO ORDERED.[11]

Herein petitioners then filed an appeal with the Regional Trial Court of Virac, Catanduanes. In its Decision[12] dated February 22, 2002, the RTC, Branch 43, of Virac, Catanduanes dismissed the appeal for lack of merit and affirmed *in toto* the Decision of the MTC. Petitioners filed a Motion for Reconsideration but it was denied by the RTC in its Order[13] of July 22, 2002.

Aggrieved by the RTC Decision, petitioners filed a Petition for Review[14] with the CA. On September 12, 2003, the CA promulgated its presently assailed Decision dismissing the Petition. Petitioners filed a Motion for Reconsideration but the same was denied by the CA in its Resolution[15] dated March 24, 2004.

Hence, the herein petition based on the following grounds:

> A. The Honorable Court of Appeals did not rule in accordance with the prevailing rules and jurisprudence when it held that the belated filing, after more than two (2) years and three (3) months from the initial application for land registration, of a sworn certification against forum shopping in Respondent's application for land registration, constituted substantial compliance with SC Admin. Circular No. 04-94.

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[10] Annex "A" to Petition, *id.* at 73-87.

[11] *Id.* at 87.

[12] Annex "B" to Petition, *id.* at 88-97.

[13] Annex "C" to Petition, *id.* at 98.

[14] *Id.* at 11.

[15] *Id.* at 296.

B. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it held that the certification of non-forum shopping subsequently submitted by respondent does not require a certification from an officer of the foreign service of the Philippines as provided under Section 24, Rule 132 of the Rules of Court.

C. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it upheld the decisions of the Regional Trial Court (RTC) and Municipal Trial Court (MTC) that the lots in question were not really owned by Petitioners' father Vicente S. Arcilla, contrary to the evidence presented by both parties.

D. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it sustained the decision of the RTC which affirmed *in toto* the decision of the MTC and in not reversing the same and rendering judgment in favor of Petitioners.[16]

In their Memorandum, petitioners further raise the following issue:

Whether or not the Supreme Court may inquire into conclusions of facts made by the Honorable Court of Appeals in the instant Petition.[17]

The Court's Ruling

The petition is bereft of merit.

The CA ruled correctly when it held that the belated filing of a sworn certification of non-forum shopping was substantial compliance with SC Administrative Circular No. 04-94.

Under the attendant circumstances in the present case, the Court cannot uphold petitioners' contention that respondent's delay of more than two years and three months in filing the required certificate of non-forum shopping may not be considered

[16] *Rollo*, pp. 35-36.

[17] *Id.* at 237-238.

substantial compliance with the requirements of SC Administrative Circular No. 04-94 and Section 5, Rule 7 of the Rules of Court; that respondent's reasons of oversight and inadvertence do not constitute a justifiable circumstance that could excuse her non-compliance with the mandatory requirements of the above-mentioned Circular and Rule; that subsequent compliance with the requirement does not serve as an excuse for a party's failure to comply in the first instance.

Section 5, Rule 7, of the Rules of Court provides:

> Sec. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

This Rule was preceded by Circular No. 28-91, which originally required the certification of non-forum shopping for petitions filed with this Court and the CA; and SC Administrative Circular No. 04-94, which extended the certification requirement for civil complaints and other initiatory pleadings filed in all courts and other agencies.

In *Gabionza v. Court of Appeals*,[18] this Court has held that Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible.[19] The same guideline still applies in interpreting what is now Section 5, Rule 7 of the 1997 Rules of Civil Procedure.[20]

The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice.[21] However, it is equally settled that litigation is not merely a game of technicalities. [22] Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.[23] Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[24] Even the Rules of Court reflect this principle.[25]

Moreover, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and

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[18] *Gabionza v. Court of Appeals*, G.R. No. 112547, July 18, 1994, 234 SCRA 192, 198.

[19] *Manuel v. Galvez*, G.R. No. 147394, August 11, 2004, 436 SCRA 96, 110.

[20] *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218, 233-234.

[21] *Barnes v. Padilla*, G.R. No. 160753, June 28, 2005, 461 SCRA 533,538 citing *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1988, 292 SCRA 38 and *Sanchez v. Court of Appeals*, G.R. No. 152766, June 20, 2003, 404 SCRA 540.

[22] *Barnes v. Padilla*, *supra*.

[23] *Barnes v. Padilla*, *supra* at 541.

[24] *Id*.

[25] *Id*.

just determination of his cause free from the constraints of technicalities.[26]

It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirement must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping.[27] In *Uy v. Land Bank of the Philippines*,[28] the Court ruled, thus:

> The admission of the petition after the belated filing of the certification, therefore, is not unprecedented. In those cases where the Court excused non-compliance with the requirements, there were special circumstances or compelling reasons making the strict application of the rule clearly unjustified. In the case at bar, the apparent merits of the substantive aspects of the case should be deemed as a "special circumstance" or "compelling reason" for the reinstatement of the petition. x x x[29]

Citing *De Guia v. De Guia*[30] the Court, in *Estribillo v. Department of Agrarian Reform*,[31] held that even if there was complete non-compliance with the rule on certification against forum-shopping, the Court may still proceed to decide the case on the merits pursuant to its inherent power to suspend its own rules on grounds of substantial justice and apparent merit of the case.

In the instant case, the Court finds that the lower courts did not commit any error in proceeding to decide the case on the merits, as herein respondent was able to submit a certification

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[26] *Anadon v. Herrera*, G.R. No. 159153, July 9, 2007, 527 SCRA 90, 96-97; *Villena v. Rupisan*, G.R. No. 167620, April 4, 2007, 520 SCRA 346, 361.

[27] *Varorient Shipping Co., Inc. v. National Labor Relations Commission*, G.R. No. 164940, November 28, 2007, 539 SCRA 131, 140.

[28] G.R. No. 136100, July 24, 2000, 336 SCRA 419.

[29] *Id.* at 429.

[30] G.R. No. 135384, April 4, 2001, 356 SCRA 287, 294-295.

[31] *Supra* note 18.

of non-forum shopping. More importantly, the apparent merit of the substantive aspect of the petition for land registration filed by respondent with the MTC coupled with the showing that she had no intention to violate the Rules with impunity, as she was the one who invited the attention of the court to the inadvertence committed by her counsel, should be deemed as special circumstances or compelling reasons to decide the case on the merits.

In addition, considering that a dismissal contemplated under Rule 7, Section 5 of the Rules of Court is, as a rule, a dismissal without prejudice, and since there is no showing that respondent is guilty of forum shopping, to dismiss respondent's petition for registration would entail a tedious process of re-filing the petition, requiring the parties to re-submit the pleadings which they have already filed with the trial court, and conducting anew hearings which have already been done, not to mention the expenses that will be incurred by the parties in re-filing of pleadings and in the re-conduct of hearings. These would not be in keeping with the judicial policy of just, speedy and inexpensive disposition of every action and proceeding.[32]

The certification of non-forum shopping executed in a foreign country is not covered by Section 24, Rule 132 of the Rules of Court.

There is no merit to petitioners' contentions that the verification and certification subsequently submitted by respondent did not state the country or city where the notary public exercised her notarial functions; and that the MTC simply concluded, without any basis, that said notary public was from Maryland, USA; that even granting that the verification and certification of non-forum shopping were notarized in the USA, the same may not be deemed admissible for any purpose in the Philippines for failure to comply with the requirement of Section 24, Rule 132 of the Rules of Court that the notarized document must be accompanied by a certificate issued by an officer in the foreign service of the Philippines who is stationed in the country in

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[32] See Rule 1, Section 6 of the Rules of Court.

which a record of the subject document is kept, proving or authenticating that the person who notarized the document is indeed authorized to do so and has custody of the same.

The Court agrees with the disquisition of the CA, to wit:

> From the foregoing provision [referring to Section 24, Rule 132, Rules of Court], it can be gathered that it does not include documents acknowledged before [a] notary public abroad. For foreign public documents to be admissible for any purpose here in our courts, the same must be certified by any officer of the Philippine legation stationed in the country where the documents could be found or had been executed. However, after judicious studies of the rule, Sec. 24, Rule 132 of the 1997 Rules of Court basically pertains to written official acts, or records of the official of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country. This is so, as Sec. 24, Rule 132 explicitly refers only to paragraph (a) of Sec. 19. If the rule comprehends to cover notarial documents, the rule could have included the same. Thus, petitioners-oppositors' contention that the certificate of forum shopping that was submitted was defective, as it did not bear the certification provided under Sec. 24, Rule 132 of the Rules of Court, is devoid of any merit. What is important is the fact that the respondent-applicant certified before a commissioned officer clothed with powers to administer oath that [s]he has not and will not commit forum shopping.[33]

The ruling of the Court in *Lopez v. Court of Appeals*,[34] cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in 1989. The rule applied in *Lopez,* which was decided prior to the effectivity of the amended Rules of Evidence,[35] was Section 25, Rule 132, to wit:

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[33] CA Decision, *rollo*, p. 90.

[34] No. 77008, December 29, 1987, 156 SCRA 838.

[35] The amendments to the Rules of Evidence were made effective on July 1, 1989.

Sec. 25. *Proof of public or official record* — **An official record or an entry therein**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office**. (Emphasis supplied)

When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase "*An official record or an entry therein,*" which was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19.*"

Thus, Section 24, Rule 132 of the Rules of Court now reads as follows:

Sec. 24. *Proof of official record*. — **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Emphasis supplied)

Section 19(a) of the same Rule provides:

Sec. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19(a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.

In *Lopez*, the requirements of then Section 25, Rule 132 were made applicable to all public or official records without any distinction because the old rule did not distinguish. However, in the present rule, it is clear under Section 24, Rule 132 that its provisions shall be made applicable only to the documents referred to under paragraph (a), Section 19, Rule 132.

The CA did not err in sustaining the findings of fact and conclusion of law of the MTC and the RTC.

Settled is the rule that the trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court.[36] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of

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[36] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 74.

discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[37] However, petitioners failed to show that any of the exceptions is present in the instant case to warrant a review of the findings of fact of the lower courts.

Petitioners insist that the documents which were presented in evidence by respondent to prove her ownership of the subject lot are rife with defects and inconsistencies. Petitioners contend that the subject lot should not have been included in the Extrajudicial Settlement of the Estate of Jose Arcilla, because he was no longer the owner of the said property at the time of said settlement; the Deed of Sale should be declared null and void because the seller, Pacifico Arcilla, was not the owner of the subject lands at the time the said Deed was executed; the Affidavit of Quitclaim is not valid and has no force and effect considering that the document indicates that the signatures of petitioners were affixed in different places, none of which is in Virac, Catanduanes where they supposedly acknowledged said document.

The only evidence of petitioners to prove their claim that the disputed property was sold by Jose Arcilla to Manuel Sarmiento in 1908 is a single Tax Declaration in the name of the latter, with a notation that the property was acquired by purchase.

The Court agrees with the CA in its finding that petitioners failed to present any substantial evidence, such as a deed of sale, to prove their claim that their predecessor, Vicente Arcilla, bought the disputed property from Sarmiento. Petitioners were

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[37] *Id.* at 74-75.

only able to present tax declarations in Vicente's name to prove their allegation that Vicente became the owner of the subject property. The tax declarations presented in evidence by petitioners are not supported by any other substantial proofs.

The Court has ruled time and again that tax declarations do not prove ownership but are at best an *indicium* of claims of ownership.[38] Payment of taxes is not proof of ownership, any more than indicating possession in the concept of an owner.[39] Neither a tax receipt nor a declaration of ownership for taxation purposes is evidence of ownership or of the right to possess realty when not supported by other effective proofs.[40]

In addition, the Court agrees with the CA when it held that if Vicente, in fact, owned the disputed properties, his widow, Josefa, would not have agreed to include said lots among those partitioned in the Extrajudicial Settlement of the Estate of Jose.

On the other hand, respondent's claim of ownership is not only backed up by tax declarations but also by other pieces of evidence such as the subject Extrajudicial Settlement, Affidavit of Quitclaim, and Deed of Sale.

Petitioners question the validity of the above-mentioned documents. However, as the CA, RTC and MTC found, these documents are all notarized. It is settled that a notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures.[41] Notarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence.[42]

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[38] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 682; *Abing v. Waeyan,* G.R. No. 146294, July 31, 2006, 497 SCRA 202, 208-209.

[39] *Id.*

[40] *Id.*

[41] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 139.

[42] *Id.*

Petitioners' bare denials of the contents of the subject documents will not suffice to overcome the presumption of their regularity considering that they are all notarized. To overthrow such presumption of regularity, the countervailing evidence must be clear, convincing and more than merely preponderant, which petitioners failed to present.[43]

An examination of the subject Extrajudicial Settlement of Estate clearly shows that the disputed lot forms part of the properties adjudicated in favor of Pacifico Arcilla, respondent's predecessor-in-interest.

Moreover, petitioners themselves admit that the Extrajudicial Settlement being referred to in the Affidavit of Quitclaim executed by petitioner and her co-heirs is the Extrajudicial Settlement of the Estate of Jose Arcilla and not of Vicente Arcilla. An examination of the Affidavit of Quitclaim shows that the reference made therein with respect to the date of execution of the said Extrajudicial Settlement as well as the notary public who acknowledged the same and the Document Number, Page Number, Book Number and Series Number all coincide with those appearing in the document evidencing the Extrajudicial Settlement of the Estate of Jose Arcilla. Hence, what has been waived by petitioners is their right, if any, to the properties mentioned in the said Affidavit of Quitclaim, which includes the presently disputed lot.

Petitioners posit that they are not bound by the subject Extrajudicial Settlement because they did not participate in nor did they sign the document evidencing such settlement and that their mother who signed on their behalf was not, in fact, authorized to do so. However, the Court agrees with the ruling of the RTC that the Extrajudicial Settlement is a public document, the same having been notarized; that such document is entitled to full faith and credit in the absence of competent evidence showing that its execution was tainted with defects and irregularities which would warrant a declaration of nullity; that in the absence of evidence showing that the person who signed in behalf of

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[43] *Tapuroc .v Loquellano Vda. de Mende*, G.R. No.152007, January 22, 2007, 512 SCRA 97, 109.

herein petitioners was, in fact, not authorized to do so, the presumption that she had the authority, as stated in the Extrajudicial Settlement, remains undisturbed.

Moreover, petitioners' execution of the subject Affidavit of Quitclaim is proof that they have ratified the contents of the disputed Extrajudicial Settlement.

Petitioners' claim that the Affidavit of Quitclaim is null and void on the ground that the signatories thereto are not residents of Virac, Catanduanes and that they affixed their signature in places other than Virac, Catanduanes where they supposedly acknowledged the said document, is not persuasive. The Court finds no error in the finding of the MTC, as affirmed by the CA, that the execution of the subject Affidavit of Quitclaim or the signatures of the affiants appearing therein were never contested nor raised as an issue and that petitioner Sarah Arcilla herself acknowledged her own signature in the said Affidavit.

In any event, the law does not require that parties to a document notarized by a notary public should be residents of the place where the said document is acknowledged or that they affix their signature in the presence of the notary public. What is necessary is that the persons who signed a notarized document are the very same persons who executed and personally appeared before the notary public in order to attest to the contents and truth of what are stated therein.[44]

In the instant case, it is established that, with the exception of petitioner Rene Arcilla, all of herein petitioners, including their now deceased mother Josefa and sister Nora, executed and personally acknowledged before the notary public the subject Affidavit of Quitclaim. Hence, aside from Rene, the said Affidavit of Quitclaim is valid and binding on all the petitioners.

With respect to Rene, petitioner Oscar Arcilla, acting as his attorney-in-fact, signed the document on the former's behalf. However, settled is the rule that:

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[44] *Fulgencio v. Martin*, A.C. No. 3223, May 29, 2003, 403 SCRA 216, 221.

A member of the bar who performs an act as a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him. The acts of the affiants cannot be delegated to anyone for what are stated therein are facts of which they have personal knowledge. They should swear to the document personally and not through any representative. Otherwise, their representative's name should appear in the said documents as the one who executed the same. That is the only time the representative can affix his signature and personally appear before the notary public for notarization of the said document. Simply put, the party or parties who executed the instrument must be the ones to personally appear before the notary public to acknowledge the document.[45]

Thus, the herein subject Affidavit of Quitclaim may not be binding on Rene. Nonetheless, with or without Rene's participation in the quitclaim, respondent's ownership of the subject lots has been established by preponderance of evidence, as unanimously found by the MTC, the RTC and the CA.

Finally, petitioners' physical occupation of the commercial building which they erected on the disputed property does not necessarily prove their ownership of the subject lots.

This Court has held that:

ownership and possession are two entirely different legal concepts. Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states 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 clearly be inferred. **Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance. Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed lot after the execution of the deed of sale in her favor because she was already able to perfect and**

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[45] *Bautista v. Bernabe*, A.C. No. 6963, February 9, 2006, 482 SCRA 1, 7-8.

complete her ownership of and title over the subject property.[46] (Emphasis supplied)

The Extrajudicial Settlement of Estate in favor of Pacifico, respondent's predecessor-in-interest, the Affidavit of Quitclaim and the Deed of Sale in favor of respondent establish respondent's ownership over the disputed property.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated September 12, 2003 and its Resolution of March 24, 2004 in CA-G.R. SP No. 72032 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164624. August 11, 2008]

SARI-SARI GROUP OF COMPANIES, INC. (formerly MARIKO NOVEL WARES, INC.), *petitioner, vs.* **PIGLAS KAMAO (Sari-Sari Chapter), RONNIE S. TAMAYO, JOSE DEL CARMEN, JOCYLENE PADUA, VICKY BERMEO and ELIZABETH MATUTINA,** *respondents.*

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[46] *Tating v. Marcella*, G.R. No. 155208, March 27, 2007, 519 SCRA 79, 90-91.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; EFFECT OF NON-VERIFICATION BY ALL PARTIES; LONE VERIFICATION OF ONE OF THE RESPONDENTS IS SUFFICIENT COMPLIANCE WITH THE REQUIREMENTS OF THE LAW.—** Section 1 of Rule 65 in relation to Section 3 of Rule 46 of the Rules of Court requires that a petition for review filed with the CA should be verified and should contain a certificate of non-forum shopping. The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative. On the other hand, the rule against forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to orderly judicial procedure. A distinction must be made between non-compliance with the requirements for Verification and noncompliance with those for Certification of Non-Forum Shopping. As to Verification, non-compliance therewith does not necessarily render the pleading fatally defective; hence, the court may order a correction if Verification is lacking; or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served. A pleading which is required by the Rules of Court to be verified may be given due course even without a verification of the circumstances warranting the suspension of the rules in the interest of justice. When circumstances warrant, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules in order that the ends of justice may thereby be served. Moreover, many authorities consider the absence of Verification a mere formal, not jurisdictional defect, the absence of which does not of itself justify a court in refusing to allow and act on the case. In *Torres v. Specialized Packing Development Corporation*, the problem was not lack of Verification, but the adequacy of one executed by only two of the twenty-five petitioners, similar to the case at bar. The Court ruled: These two signatories are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition.

This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with. Based on the foregoing, the lone Verification of respondent Jose del Carmen is sufficient compliance with the requirements of the law.

2. **ID.; ID.; ID.; CERTIFICATE AGAINST FORUM SHOPPING; MAY BE RELAXED ON GROUNDS OF "SUBSTANTIAL COMPLIANCE" OR "SPECIAL CIRCUMSTANCES OR COMPELLING REASONS"; SINCE ALL THE RESPONDENTS SHARE A COMMON INTEREST TO THE RESOLUTION OF THE LABOR DISPUTE BETWEEN THEM AND PETITIONER, THE CERTIFICATE SIGNED BY ONE OF THE RESPONDENTS IS SUBSTANTIAL COMPLIANCE WITH THE RULE.—** The lack of a Certificate of Non-Forum Shopping, unlike that of Verification is generally not curable by the submission thereof after the filing of the petition. The submission of a certificate against forum shopping is thus deemed obligatory, albeit not jurisdictional. The rule on certification against forum shopping may, however, be also relaxed on grounds of "substantial compliance" or "special circumstances or compelling reasons." Applicable to this case is *Cavile v. Heirs of Clarita Cavile*. Finding that the petitioners were relatives and co-owners jointly sued over property in which they had common interest, this Court in that case held that the signature of just one co-owner on the Certificate of Non-Forum Shopping in the petition before the Court substantially complied with the rule in this wise: We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same

issues. In the case at bar, respondent Jose del Carmen shares a common interest with the other respondents as to the resolution of the labor dispute between them and the petitioner. They collectively sued the petitioner for illegal dismissal and unfair labor practices and have collectively appealed the NLRC decision. Similarly, there is sufficient basis for Jose del Carmen to speak on behalf of his co-respondents in stating that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there any other pending action or claim in another court or tribunal involving the same issues. Thus, even if only respondent Jose del Carmen signed the Certificate of Non-Forum Shopping, the rule on substantial compliance applies. The CA therefore did not commit any error in entertaining the appeal of the respondents.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* THE APPELLATE COURT MAY EXAMINE AND MEASURE THE FACTUAL FINDINGS OF THE NLRC IF THE SAME IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.—** As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh the sufficiency of evidence upon which the LA and the NLRC based their conclusion. The query in the proceeding before the CA is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. We find this exception applicable to the case at bar.

4. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EFFECT OF QUITCLAIMS; A DEED OF RELEASE OR QUITCLAIM CANNOT BAR AN EMPLOYEE FROM DEMANDING BENEFITS TO WHICH HE IS LEGALLY ENTITLED.—** Under prevailing jurisprudence, a deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled. Similarly, employees who received their separation pay are not barred from contesting the legality of their dismissal, and the acceptance of such benefits would not amount to estoppel. 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. As observed in *Cariño v. Agricultural Credit and Cooperative Financing Administration*: 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.

5. **ID.; ID.; AUTHORIZED CAUSES; RETRENCHMENT; RECORDS SHOW THAT PETITIONER HAD IN FACT "RETRENCHED" HIS WORKERS AND IT WOULD BE UNFAIR TO PERMIT PETITIONER TO CHANGE HIS THEORY TO "CLOSURE."—** After a perusal of the records of the case and pleadings submitted, we find that petitioner had in fact retrenched workers. All the pleadings submitted to the LA by the petitioner clearly showed that what it had in mind when it terminated the services of respondents was that it had retrenched workers. It was only when respondents appealed the LA decision that petitioner pursued a new theory, that is, that what was involved was a simple closure of business which did not require proof of substantial losses. This we cannot allow. The Court's ruling in *Nielson & Company, Inc. v. Lepanto Mining Co*., is instructive and may be applied by analogy: We have taken note that Lepanto is advancing a new theory. We have carefully examined the pleadings filed by Lepanto in the lower court, its memorandum and its brief on appeal, and never did it assert the theory that it has the right to terminate the management contract because that contract is one of agency which it could terminate at will. While it is true that in its ninth and tenth special affirmative defenses, in its answer in the court below, Lepanto pleaded that it had the right to terminate the management contract in question, that plea of its right to terminate was not based upon the ground that the relation between Lepanto and Nielson was that of

principal and agent but upon the ground that Nielson had allegedly not complied with certain terms of the management contract. If Lepanto had thought of considering the management contract as one of agency it could have amended its answer by stating exactly its position. It could have asserted its theory of agency in its memorandum for the lower court and in its brief on appeal. This, Lepanto did not do. When a party deliberately adopts a certain theory, and the case is tried and decided on that theory in the court below, the party will not be permitted to change his theory on appeal. To permit him to change his theory will be unfair to the adverse party. It is the rule, and the settled doctrine of this Court, that a party cannot change his theory on appeal; that is, that a party cannot raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings.

6. ID.; ID.; ID.; ID.; REQUISITES OF RETRENCHMENT.— Having concluded that petitioner retrenched workers, we now decide as to whether or not petitioner had complied with the requisites of retrenchment. For retrenchment to be valid, the following requisites must be satisfied: 1. The losses expected should be substantial and not merely de minimis in extent; 2. The substantial losses apprehended must be reasonably imminent; 3. The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and 4. **The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proven by sufficient and convincing evidence.**

7. ID.; ID.; ID.; ID.; PETITIONER FAILED TO DISCHARGE ITS DUTY OF SHOWING THAT THE DISMISSAL WAS LEGAL; OTHER THAN PETITIONER'S BARE ASSERTION OF IRREVERSIBLE LOSS, THERE IS NO EVIDENCE TO PROVE AND SUBSTANTIATE IT.— The CA was correct in finding that petitioner failed to discharge its duty of showing that the dismissal of the employees was legal, to wit: While the notice of termination stated that the closure of the branch was due to irreversible losses and the non-extension of the lease contract, Mariko did not present any audited financial statements or documents to substantiate its irreversible losses. Its mere allegation thereof is not enough. x x x Without competent and sufficient proof to show that

irreversible losses suffered, the legality of the dismissal of the petitioners [herein respondents] cannot be sustained. In the case of *Uichico v. National Labor Relations Commission,* this Court affirmed the finding of the NLRC as to the kind of evidence needed to prove irreversible loss: We observe that the basis of the Labor Arbiter in sustaining the argument of financial reverses is the Statement of Profit and Losses submitted by respondent employer. **The same, however, does not bear the signature of a certified public accountant or audited by an independent auditor.** Briefly stated, it has no evidentiary value. In the case at bar, as pointed out by the respondents, petitioner failed to submit its audited financial statements to the Securities and Exchange Commission for the years 1991 and 1992. Thus, other than petitioner's bare allegation of irreversible loss, there is no evidence to prove and substantiate it. Retrenchment is a management prerogative, a means to protect and preserve the employer's viability and ensure his survival. This Court has always respected this prerogative during trying times, but there must be faithful compliance by management with the substantive and procedural requirements laid down by law and jurisprudence. Petitioner having failed in discharging it's burden of submitting sufficient and convincing evidence required by law, we hold that respondents Ronnie Tamayo, Jose del Carmen, Jocylene Padua, Vicky Bermeo and Elizabeth Matutina were illegally dismissed.

8. **ID.; ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; BACKWAGES; CASE AT BAR.—** An illegally dismissed employee is entitled to either (1) reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. In the case at bar, since fourteen years have already lapsed since the termination of the respondents, we deem it proper that separation pay in lieu of reinstatement be awarded. Since petitioner has already paid respondents their separation pay, it is only liable to pay the respondents their backwages computed from the time of their illegal dismissal up to the time of the finality of this judgment.

APPEARANCES OF COUNSEL

D.A. Tejero & Amoranto Law Offices for petitioner.
Sentro ng Alternatibong Lingap Panligal for respondents.

DECISION

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the March 1, 2004 Decision[1] and July 22, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 51381.

The antecedents of the case are as follows:

In December 1990, Mariko Novel Wares, Inc. (petitioner) began its retail outlet operations under the name "Sari-Sari" in the basement of Robinson's Galleria in Quezon City.[3] Among its employees were: Head Checker Ronnie Tamayo, Checker Jose del Carmen, Section Heads Jocylene Padua, Vicky Bermeo, and Elizabeth Matutina (respondents), all of whom were assigned at the Robinsons Galleria branch.[4]

On November 30, 1993, respondents organized a union known as *Piglas Kamao* (Sari-Sari Chapter). At the time of the formation, the officers of the union were respondents Ronnie Tamayo, President; Jose del Carmen, Vice-President; and Jocelyne Padua, Secretary.[5] Respondents claim that petitioner, through its President, Rico Ocampo,[6] interfered with the formation of the union.

On December 14, 1993, respondent union filed a petition for certification elections with the Department of Labor and Employment (DOLE). On the next day, December 15, 1993, petitioner issued a policy statement pertaining to "Employee Complaints/Grievance Procedure," stating, among others, that

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[1] Penned by Justice Lucas P. Bersamin with the concurrence of Justices Godardo A. Jacinto and Elvi John S. Asuncion; *rollo*, pp. 51-62.

[2] *Id.* at 64.

[3] *Id.* at 52.

[4] *Rollo*, pp.76-86.

[5] *Id.* at 382.

[6] *Id.* at 383.

it "supports an 'open communication policy' both vertical and horizontal within the organization."[7]

Meanwhile, respondents were informed of the petitioner's plan to close the basement level store to give way to the opening of a Sari-Sari outlet on the third floor of Robinson's Galleria. Respondents were supposed to be absorbed in other Sari-Sari store branches.[8] However, on January 9, 1994, petitioner put up an advertisement in the *Manila Bulletin*, announcing its need for inventory, accounting, and sales clerks. Applicants were requested to apply personally at the Robinson's Galleria branch.[9]

During the month of January 1994, petitioner's managerial staff approached union members to express disapproval of the union membership.[10]

On January 26, 1994, as a result of the aforementioned events, respondent union filed an unfair labor practice case with the Labor Arbiter (LA) against the petitioner for harassment, coercion, and interference with the worker's right to self-organization.

On the next day, January 27, 1994, petitioner notified DOLE and the respondents of the closure of the Galleria branch due to irreversible losses and non-extension of the lease of the store premises, to be effective on February 28, 1994. Moreover, the respondents were told that they would not be absorbed in the other branches of the petitioner because of redundancy.[11]

On February 11, 1994, respondents Tamayo, Del Carmen, and Padua filed amended complaints of unfair labor practice and illegal dismissal against petitioner. On March 28, 1994, respondents filed six supplemental complaints for illegal dismissal, non-payment of premium pay for holiday and rest day for the

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[7] *Id.* at 52.

[8] *Id.* at 53.

[9] *Id.* at 383.

[10] *Id.* at 383-384.

[11] *Rollo*, p. 53.

years 1992 and 1993, and non-payment of 13th month pay for the year 1994 as well as for moral and exemplary damages.[12]

In its defense, petitioner denied that the closure of the Galleria branch was intended to prevent the formation of the union, saying that the closure was due to consistent losses the branch was incurring. Petitioner further alleged in its position paper submitted to the LA that:

> On rentals expenses alone it was already paying its lessor ₱341,760.38, excluding other charges for the use of the Robinsons Galleria common areas, not to mention water and electric consumption x x x. The premises being leased by Petitioner was too large. Worse, it was located at the Park Avenue area of the Robinsons Galleria which has the lowest shopper traffic in the Robinsons Galleria.
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> When the 3-year lease of the Petitioner was about to expire, it was therefore deemed more prudent to cease operations.[13]

Furthermore, petitioner claimed that it consistently failed to reach sales quota, forcing it to pay penalties to Robinson's Galleria and that it was the decision of the Board of Directors to close the branch.[14]

On April 27, 1997, the LA rendered his decision dismissing the complaint for illegal dismissal, unfair labor practices and damages for lack of merit. However, the LA ordered the petitioner to pay the respondents separation pay and proportionate 13th month pay.[15] The LA ruled that the presence of respondent union officers Tamayo, Del Carmen and Padua in the Robinson's Galleria branch was merely coincidental and that the closure of the branch was due to the expiration of the lease contract and the increasing expenses of maintaining the branch.[16] The decision was appealed to the National Labor Relations Commission (NLRC).

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[12] *Id.*at 75-88.

[13] *Id.* at 92-93.

[14] *Rollo*, p. 54.

[15] *Id.* at 54.

[16] *Id.* at 55.

During the pendency of the appeal, respondents Bermeo, Matutina, and Padua separately filed their respective manifestations and Motions to Dismiss, praying that the appeal be dismissed as to them due to their having already executed their respective quitclaims releasing Mariko from liability.[17]

The NLRC affirmed the decision of the LA but dismissed the claims of Bermeo, Matutina and Padua as they had executed quitclaims. Respondents filed a Motion for Reconsideration which was denied by the NLRC. Respondents then appealed to the CA.

The CA ruled that petitioner failed to discharge its burden of submitting competent proof to show the irreversible substantial losses it suffered warranting the closure of the Galleria branch. The CA ruled:

> While the notice of termination stated that the closure of the branch was due to irreversible losses and the non-extension of the lease contract, Mariko did not present any audited financial statements or documents to substantiate its irreversible losses. Its mere allegation thereof is not enough. Also, that the affected branch failed to reach the sales quota was not a factor to justify retrenchment, since the failure of the affected branch to reach the sales quota did not amount to a substantial loss which met the requisites of a valid retrenchment.[18]

Anent the issue of unfair labor practice the CA ruled that such was a question of fact that was beyond the ambit of the present recourse for *certiorari*.

> We cannot disturb, therefore, the findings of the NLRC on the matter which were based on substantial evidence for our task is only to determine whether the NLRC committed grave abuse of discretion in applying the law to the established facts. xxx. That manner of abuse did not attend the conclusion of the NLRC that the respondents [petitioner herein] were not involved in union-busting or anti-union activities.[19]

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[17] *Id.* at 56.

[18] *Rollo*, p. 57.

[19] *Id.* at 60.

Lastly, the CA ruled that the release and quitclaims executed by respondents Padua, Bermeo and Matutina did not preclude them from assailing their termination.

The dispositive part of the CA decision reads:

WHEREFORE, the PETITION FOR *CERTIORARI* is PARTLY GRANTED.

The resolution dated November 17, 1998 of the National Labor Relations Commission is *PRO TANTO* MODIFIED, ordering respondent MARIKO NOVEL WARES, INC., to pay all individual petitioners their full backwages from the time of their illegal dismissal on February 28, 1994 up to the finality of this judgment.

SO ORDERED.[20]

The CA denied petitioner's motion for reconsideration.

Hence, herein petition raising the following issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN GRANTING RESPONDENT'S PETITION FOR *CERTIORARI* AND IN SETTING ASIDE THE FINDINGS OF BOTH THE NLRC AND THE LABOR ARBITER *A QUO*.

Petitioner claims that:

1. **The Court of Appeals committed palpable error in setting aside both the factual findings made by both the Labor Arbiter and the NLRC that respondents had been validly dismissed from employment on the ground of closure.**[21]
2. **The Court of Appeals committed serious error in requiring petitioner to prove substantial losses. Dismissal on the ground of closure does not require proof of substantial business reverses.**[22]

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[20] *Id.* at 62.

[21] *Rollo*, p. 27.

[22] *Id.* at 31.

3. **If an employer can validly cease operation even when not incurring losses, with more reason can it close down if it is suffering from financial reverses, as what happened in this case.**[23]

4. **Article 283 of the Labor Code which permits closure or cessation of operation of an establishment likewise governs cases of partial closure. It was therefore serious error on the part of the Court of Appeals to have applied the rules on retrenchment to the case at bar.**[24]

5. **Assuming the Lopez Sugar Corporation case applies, the requisites stated therein were complied with in this case.**[25]

6. **The Court of Appeals seriously erred in invalidating the quitclaims of respondents Bermeo, Matutina and Padua.**[26]

7. **The Court of Appeals seriously erred in taking cognizance of the petition insofar as the four other alleged petitioners therein were concerned, considering only Jose Del Carmen signed and verified the petition.**[27]

As general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,[28] such as in this case where the findings of the LA and the NLRC vary from the findings of the CA.

Before discussing the substantive merits of the case, we will first discuss the procedural matters raised.

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[23] *Id.* at 37.

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

[25] *Id.* at 39.

[26] *Id.* at 41.

[27] *Id* at 43.

[28] *Eastern Communications Philippines, Inc. v. Diamse*, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 243.

Effect of Non-Verification by All Parties

Section 1 of Rule 65[29] in relation to Section 3 of Rule 46[30] of the Rules of Court requires that a petition for review filed with the CA should be verified and should contain a certificate of non-forum shopping.

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative.[31] On the

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[29] **Section 1.** *Petition for certiorari*. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

[30] **Section 3.** *Contents and filing of petition*; *effect of noncompliance with requirements*.

> x x x The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
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> x x x x x x x x x
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> The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition. (n; Bar Matter No. 803, 21 July 1998).

[31] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463.

other hand, the rule against forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to orderly judicial procedure.[32]

A distinction must be made between non-compliance with the requirements for Verification and noncompliance with those for Certification of Non-Forum Shopping. As to Verification, non-compliance therewith does not necessarily render the pleading fatally defective; hence, the court may order a correction if Verification is lacking; or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served.[33]

A pleading which is required by the Rules of Court to be verified may be given due course even without a verification of the circumstances warranting the suspension of the rules in the interest of justice.[34] When circumstances warrant, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules in order that the ends of justice may thereby be served.[35] Moreover, many authorities consider the absence of Verification a mere formal, not jurisdictional defect, the absence of which does not of itself justify a court in refusing to allow and act on the case.[36]

In *Torres v. Specialized Packing Development Corporation*,[37] the problem was not lack of Verification, but the adequacy of

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[32] *Uy v. Land Bank of the Philippines*, 391 Phil 303, 312 (2000).

[33] *Uy v. Land Bank of the Philippines*, *supra* note 32.

[34] *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667.

[35] *Vda. de Gabriel v. Court of Appeals*, G.R. No. 103883, November 14, 1996, 264 SCRA 137.

[36] *Uy v. Workmen's Compensation Commission*, No. L-43389, April 28, 1980, 97 SCRA 255.

[37] *Supra* note 31, at 455.

one executed by only two of the twenty-five petitioners, similar to the case at bar. The Court ruled:

> These two signatories are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.[38]

Based on the foregoing, the lone Verification of respondent Jose del Carmen is sufficient compliance with the requirements of the law.

On the other hand, the lack of a Certificate of Non-Forum Shopping, unlike that of Verification is generally not curable by the submission thereof after the filing of the petition.[39] The submission of a certificate against forum shopping is thus deemed obligatory, albeit not jurisdictional.[40]

The rule on certification against forum shopping may, however, be also relaxed on grounds of "substantial compliance" or "special circumstances or compelling reasons."[41]

Applicable to this case is *Cavile v. Heirs of Clarita Cavile*.[42] Finding that the petitioners were relatives and co-owners jointly sued over property in which they had common interest, this Court in that case held that the signature of just one co-owner on the Certificate of Non-Forum Shopping in the petition before the Court substantially complied with the rule in this wise:

> We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping

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[38] *Id.* at 464.

[39] *Torres v. Specialized Packaging Development Corporation*, *supra* note 31, at 465.

[40] *Supra* at 465.

[41] *Mamaril v. Civil Service Commission*, G.R. No. 164929, April 10, 2006, 487 SCRA 65, 73.

[42] 448 Phil 302 (2003).

constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues.[43]

In the case at bar, respondent Jose del Carmen shares a common interest with the other respondents as to the resolution of the labor dispute between them and the petitioner. They collectively sued the petitioner for illegal dismissal and unfair labor practices and have collectively appealed the NLRC decision. Similarly, there is sufficient basis for Jose del Carmen to speak on behalf of his co-respondents in stating that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there any other pending action or claim in another court or tribunal involving the same issues. Thus, even if only respondent Jose del Carmen signed the Certificate of Non-Forum Shopping, the rule on substantial compliance applies. The CA therefore did not commit any error in entertaining the appeal of the respondents.

Effect of Quitclaims

Petitioner asserts that the CA erred in invalidating the quitclaims of respondents Bermeo, Matutina and Padua on the ground that there was an absence of showing that their execution was not voluntary;[44] and that the record was devoid of any showing that the terms of the settlement were not fair and just.[45]

Under prevailing jurisprudence, a deed of release or quitclaim cannot bar an employee from demanding benefits to which he

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[43] *supra* note 42, at 311-312.

[44] *Rollo*, p. 42.

[45] *Id*.

is legally entitled.[46] Similarly, employees who received their separation pay are not barred from contesting the legality of their dismissal, and the acceptance of such benefits would not amount to estoppel.[47]

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.[48]

As observed in *Cariño v. Agricultural Credit and Cooperative Financing Administration*:[49]

> 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.[50]

Review of Facts by the CA under Rule 65

As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh the

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[46] *Fuentes v. National Labor Relations Commission*, No. 76835, November 24, 1988, 167 SCRA 767.

[47] *Mercury Drug Co., Inc. v. Court of Industrial Relations*, No. L-23357, April 30, 1974, 56 SCRA 694.

[48] *Philippine Sugar Institute v. Commissioner on Internal Revenue*, 109 Phil. 452 (1960); *Mercury Drug Co. v. Commissioner on Internal Revenue*, No. L-23357, April 30, 1974, 56 SCRA 694, 706.

[49] No. L-19808, September 29, 1966, 18 SCRA 183.

[50] *Cariño v. Agricultural Credit and Cooperative Financing Administration, supra* note 49, at 190.

sufficiency of evidence upon which the LA and the NLRC based their conclusion. The query in the proceeding before the CA is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[51] We find this exception applicable to the case at bar.

Main Issue : Closure or Retrenchment?

Petitioner and respondents seem to be at variance as to what the theory of the case is. In its Memorandum, petitioner claims that evidence of substantial business reverses is not required in terminating employees on the ground of closure.[52] On the other hand, respondents in their Memorandum claim that evidence of substantial business reverses is required in the termination of employees on the ground of retrenchment.[53] Thus, the resolution of the case at bar depends on whether we consider the act of petitioner in terminating respondents as one grounded on closure or as one grounded on retrenchment.

The initial notice of the petitioner to DOLE did not clearly state whether petitioner was retrenching workers or simply closing its branch. Petitioner merely stated that they were closing the Galleria branch due to irreversible losses and the non-extension of the lease,[54] as a consequence of which the employees of the said branch were terminated.

In the position paper of the petitioner submitted to the LA, we find that the theory of the case as far as it was concerned was that it had retrenched employees. This finding is bolstered by the fact that the term "retrenchment" was used in a number of paragraphs, to wit:

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[51] *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, April 15, 2005, 456 SCRA 382, 395-396.

[52] *Rollo,* p. 422.

[53] *Id.* at 387.

[54] *Rollo*, p. 104.

Accordingly, all the employees of the respondent's Robinsons Galleria branch were terminated/**retrenched**.[55]

The separation pay of the employees concerned, and whatever other benefits they were entitled to were tendered to the **retrenched** employees.[56]

It would later appear that certain union officers were among those terminated/**retrenched** by the respondent pursuant to the closure of its Robinsons Galleria branch.[57]

Neither was respondent aware that there were union officers among its **retrenched** employees of the Robinsons Galleria branch.[58]

x x x then the lawful and legitimate **retrenchment** of the employees of the respondent's Robinsons Galleria branch negates any notion of illegal dismissal on the part of the petitioner.[59] (Emphasis supplied)

Moreover, one of the arguments raised by the petitioner in its position paper was that it had "complied with all the requirements of the Labor Code relative to **retrenchment**."[60] In addition, petitioner cited *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment*[61] as reference. A reading of the case will show that the issue presented involved the legality of a retrenchment measure in order to minimize business losses.

Later, in its Formal Offer of evidence, petitioner submitted Exhibit "5", described as the Notice to Department of Labor and Employment, for the purpose of proving that the employees concerned were not illegally dismissed, because the closure of the Robinson's Galleria Branch was due to business losses which resulted in the **retrenchment** of employees who could not be

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[55] *Id.* at 91.

[56] *Id.*

[57] *Id.* at 92.

[58] *Id.* at 97.

[59] *Id.* at 98.

[60] *Id.* at 95. Emphasis supplied.

[61] *Id.* at 95, 97; G.R No. 76966, August 7, 1992, 212 SCRA 357.

absorbed by the company.[62] Furthermore, petitioner submitted Exhibit "4", described as the Affidavit of Luis Getuela, to prove that the employees concerned were not illegally dismissed, because Mario-Novel closed down its Robinson's Galleria branch due to business losses which resulted in the **retrenchment** of employees.[63] In his affidavit, Luis Getuela made the following declaration: "As a result of its closure due to business losses, the personnel assigned thereat were **retrenched**."[64] (Emphasis supplied)

The decision of the LA, although not categorical in its pronouncement, disposed of the issue by stating that the decision to close the Robinson's branch was a management prerogative. However, the Court notes that the cases cited by the LA, namely*: Dangan v. National Labor Relations Commission and Catatista v. National Labor Relations Commission*, both involved cases that tackled the issue of retrenchment. Cited was the pertinent portion of the LA decision:

> The above factors lead us to conclude that the closure of the Robison's Galleria branch was indeed prompted by the expiration of the contract of lease and that Mariko simply saw this as an opportunity to assess its business position in the light of the circumstances surrounding the situation. With the spiraling cost of rental, other incidental charges coupled with its failure to achieve the sales quota required by the lessor, it would be foolhardy for the respondents to continue doing business under the circumstances. Well settled is the principle that it is the prerogative of management to close its business provided it complies with the requirements of the law. In the case at bar, if respondent Mariko opted to cease the operations of its Robinson's Galleria branch due to the expiration of its lease contract and on account of economic reasons, such decision must be respected as entirely within its prerogative. Labor tribunals are not authorized to substitute the judgment of the employer on purely business matters. **If an employer has the right to close the entire establishment altogether and cease operations due to economic condition, the closure of a part thereof to minimize**

[62] *Rollo*, p. 152.

[63] *Id*.

[64] *Id* at. 156.

expenses and reduce capitalization should also be recognized (*Dangan v. NLRC*, 127 SCRA 706). **The prerogative to continue a business or a part thereof, belongs to the employer, even, if he is not suffering from serious business losses** (*Catatista v. NLRC*, 247 SCRA 46), **so long as the requirements of law are complied** with. In this connection, records reveal that a written notice was served upon the affected workers and the Department of Labor and Employment on January 28, 1994 (Exhibit "B") and their dismissal was made effective February 28, 1994 or one month hence Mariko tendered the amounts of one-half month salary for every year of service or one month pay whichever is higher, to the individual complainants by way of separation pay, but the individual complainants, except Evangeline dela Cruz who executed a Release Waiver and Quitclaim (Annex "A", respondents' reply), refused to accept the same. Clearly, therefore, respondents also complied with the requirements of the law in affecting the dismissal of the complainants. Respondents cannot be forced to absorb the complainants in the other branches which are already filled up by other Mariko employees. Otherwise, they will be over-staffed. As explained by the respondents, redundancy will result if they are made to absorb the complainants, as there will be surplus employees.[65] (Emphasis supplied)

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Consonant with the above, we find the termination of the services of the individual complainants were anchored on valid grounds.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal, unfair labor practice and damges (sic) for lack of merit, but ordering the respondent MARIKO NOVEL WARES, INC. to pay complainants Ronnie Tamayo, Jose del Carmen, Vicky Bermeo, Jocelyn Padua ad (sic) Elizabeth Matutina the amount of SIXTY-SIX THOUSAND EIGHT HUNDRED FOUR PESOS AND 74/100.

x x x x x x x x x

Representing their separation pay and proportionate 13th month pay for the year 1994 within ten days from receipt hereof

All other issues are dismissed for lack of merit

SO ORDERED.

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[65] *Rollo*, pp. 172-174.

Thereafter, in its Opposition to Memorandum of Appeal, petitioner, contrary to its earlier allegation that it had validly retrenched workers, raised the argument that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses as long as he pays employees their termination pay.[66]

Afterwards, the NLRC after re-stating the facts, ruled in this wise:

> In a nutshell, the Labor Arbiter below did not commit serious error in ruling for the complainant. "Well entrenched is the rule that when the conclusion of the Labor Arbiter are sufficiently corroborated by the evidence on record, the same should be respected by the appellate tribunals since, he is in a better position to assess and evaluate the credibility of the contending parties. Findings of labor tribunals which are substantially supported by evidence and in the absence of grave abuse of discretion are not only accorded respect but with finality.
>
> WHEREFORE, the assailed Decision is AFFIRMED as far as complainants Ronie Tamayo and Jose del Carmen are concerned while the complaint of Vicky Bermeo, Jocelyne Padua and Elizabeth Matutina are dismissed pursuant to the Receipt, Release and Quitclaim executed and signed by them.
>
> Accordingly, the appeal is dismissed for lack of merit.
>
> SO ORDERED.[67]

Throughout the entire proceedings before the LA and the NLRC, respondents were adamant that petitioner failed to present sufficient and convincing evidence of the alleged losses to justify a retrenchment of workers.[68] It pursued the same argument in the CA,[69] which ruled in their favor.

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[66] *Id.* at 213-215.

[67] *Rollo*, pp. 228-229.

[68] *Id.* at 191-192, 233.

[69] *Id.* at 252.

After a perusal of the records of the case and pleadings submitted, we find that petitioner had in fact retrenched workers. All the pleadings submitted to the LA by the petitioner clearly showed that what it had in mind when it terminated the services of respondents was that it had retrenched workers. It was only when respondents appealed the LA decision that petitioner pursued a new theory, that is, that what was involved was a simple closure of business which did not require proof of substantial losses. This we cannot allow.

The Court's ruling in *Nielson & Company, Inc. v. Lepanto Mining Co.*,[70] is instructive and may be applied by analogy:

> We have taken note that Lepanto is advancing a new theory. We have carefully examined the pleadings filed by Lepanto in the lower court, its memorandum and its brief on appeal, and never did it assert the theory that it has the right to terminate the management contract because that contract is one of agency which it could terminate at will. While it is true that in its ninth and tenth special affirmative defenses, in its answer in the court below, Lepanto pleaded that it had the right to terminate the management contract in question, that plea of its right to terminate was not based upon the ground that the relation between Lepanto and Nielson was that of principal and agent but upon the ground that Nielson had allegedly not complied with certain terms of the management contract. If Lepanto had thought of considering the management contract as one of agency it could have amended its answer by stating exactly its position. It could have asserted its theory of agency in its memorandum for the lower court and in its brief on appeal. This, Lepanto did not do.[71]

When a party deliberately adopts a certain theory, and the case is tried and decided on that theory in the court below, the party will not be permitted to change his theory on appeal. To permit him to change his theory will be unfair to the adverse party.[72] It is the rule, and the settled doctrine of this Court,

[70] No. L-21601, December 28, 1968, 26 SCRA 540.

[71] *Nielson and Company, Inc. v. Lepanto Mining Co., supra* note 70, at 544-545.

[72] *FMIC v. Court of Appeals*, G.R. No. 85141, November 28, 1989, 179 SCRA 638.

that a party cannot change his theory on appeal; that is, that a party cannot raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings.[73]

Having concluded that petitioner retrenched workers, we now decide as to whether or not petitioner had complied with the requisites of retrenchment. For retrenchment to be valid, the following requisites must be satisfied:

1. The losses expected should be substantial and not merely de minimis in extent;
2. The substantial losses apprehended must be reasonably imminent;
3. The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and
4. **The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proven by sufficient and convincing evidence**.[74] (Emphasis supplied)

Petitioner claimed to have suffered irreversible loss. To substantiate this, petitioner cites the following factors: (1) that when the lease was about to expire, it was already paying Robinson's Land Corporation almost Three Hundred Forty-One Thousand Seven Hundred Sixty-Six Pesos and Thirty-Eight Centavos (₱341,766,38) in monthly rental, excluding other charges for the use of Robinson's Galleria common areas, not to mention water and electric consumption;[75] (2) that from the inception of its operation at the Robinson's Galleria, the Sari-Sari branch continually suffered losses in its operations;[76]

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[73] Section 19, Rule 49 of the old Rules of Court, and also Section 18 of the new Rules of Court; *Hautea v. Magallon*, 120 Phil. 1306 (1964); *Northern Motors, Inc. v. Prince Line*, 107 Phil. 253 (1960).

[74] *Lopez Sugar Corp. v. Federation of Free Workers*, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187.

[75] *Rollo*, p. 90.

[76] *Id.* at 90.

(3) that it consistently failed to reach the sales quota assigned to it under the lease contract with Robinson's Land Corporation such that it was even forced to pay penalties;[77] (4) that in September 1993, when the lease contract was about to expire, its board of directors decided to close the Robinson's outlet; (5) that Robinson's Land Corporation was not too keen on renewing the lease contract considering it failure to reach sales quota.[78]

The CA was correct in finding that petitioner failed to discharge its duty of showing that the dismissal of the employees was legal, to wit:

> While the notice of termination stated that the closure of the branch was due to irreversible losses and the non-extension of the lease contract, Mariko did not present any audited financial statements or documents to substantiate its irreversible losses. Its mere allegation thereof is not enough.
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> x x x x x x x x x
>
> Without competent and sufficient proof to show that irreversible losses suffered, the legality of the dismissal of the petitioners [herein respondents] cannot be sustained.[79]

In the case of *Uichico v. National Labor Relations Commission,*[80] this Court affirmed the finding of the NLRC as to the kind of evidence needed to prove irreversible loss:

> We observe that the basis of the Labor Arbiter in sustaining the argument of financial reverses is the Statement of Profit and Losses submitted by respondent employer. **The same, however, does not bear the signature of a certified public accountant or audited by an independent auditor**. Briefly stated, it has no evidentiary value.[81] (Emphasis supplied)

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[77] *Id.* at 91.

[78] *Id.*

[79] *Id.* at 59.

[80] G.R. No. 121434, June 2, 1997, 273 SCRA 35.

[81] *Id.* at 44.

In the case at bar, as pointed out by the respondents, petitioner failed to submit its audited financial statements to the Securities and Exchange Commission for the years 1991 and 1992.[82] Thus, other than petitioner's bare allegation of irreversible loss, there is no evidence to prove and substantiate it.

Retrenchment is a management prerogative, a means to protect and preserve the employer's viability and ensure his survival. This Court has always respected this prerogative during trying times, but there must be faithful compliance by management with the substantive and procedural requirements laid down by law and jurisprudence.[83]

Petitioner having failed in discharging it's burden of submitting sufficient and convincing evidence required by law, we hold that respondents Ronnie Tamayo, Jose del Carmen, Jocylene Padua, Vicky Bermeo and Elizabeth Matutina were illegally dismissed.

An illegally dismissed employee is entitled to either (1) reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.[84] In the case at bar, since fourteen years have already lapsed since the termination of the respondents, we deem it proper that separation pay in lieu of reinstatement be awarded. Since petitioner has already paid respondents their separation pay, it is only liable to pay the respondents their backwages computed from the time of their illegal dismissal up to the time of the finality of this judgment.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated March 31, 2004 and its Resolution dated July 2, 2004 in CA-G.R. SP No. 51381 are *AFFIRMED*.

Costs against petitioner.

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[82] Records, p. 97.

[83] *Central Azucarera de la Carlota v. National Labor Relations Commission*, G.R. No. 100092, December 29, 1995, 251 SCRA 589, 595.

[84] *Masagana Concrete Products v. National Labor Relations Commission,* G.R. No. 106916, September 3, 1999, 313 SCRA 576, 595-596.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165744. August 11, 2008]

OSCAR C. REYES, *petitioner, vs.* **HON. REGIONAL TRIAL COURT OF MAKATI, Branch 142, ZENITH INSURANCE CORPORATION, and RODRIGO C. REYES,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION REORGANIZATION ACT (P.D. 902-A); JURISDICTION OF REGIONAL TRIAL COURTS ACTING AS SPECIAL COMMERCIAL COURTS; CHARGES OF FRAUD AGAINST PETITIONER NOT PROPERLY SUPPORTED BY THE REQUIRED FACTUAL ALLEGATIONS.—** The rule is that a complaint must contain a plain, concise, and direct statement of the ultimate facts constituting the plaintiff's cause of action and must specify the relief sought. Section 5, Rule 8 of the Revised Rules of Court provides that **in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularly**. These rules find specific application to Section 5(a) of P.D. No. 902-A which speaks of corporate devices or scheme that amount to fraud or misrepresentation detrimental to the public and/or to the stockholders. Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action. The late

Justice Jose Feria, a noted authority in Remedial Law, declared that fraud and mistake are required to be averred with particularity in order to enable the opposing party to controvert the particular facts allegedly constituting such fraud or mistake. Tested against these standards, we find that the charges of fraud against Oscar were not properly supported by the required factual allegations. While the complaint contained allegations of fraud purportedly committed by him, these allegations of fraud purportedly committed by him, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged appropriation of shares can be characterized as "illegal and fraudulent" were not explained nor elaborated on.

2. ID.; ID.; ID.; FRAUDULENT DEVICES AND SCHEME; THERE MUST BE SUFFICIENT NEXUS SHOWING THAT THE CORPORATION'S NATURE, STRUCTURE OR POWERS WERE USED TO FACILITATE THE FRAUDULENT DEVICE OR SCHEME; THE COMPLAINT MUST SHOW ON ITS FACE WHAT ARE CLAIMED TO BE FRAUDULENT CORPORATE ACTS IF THE COMPLAINANT WISHES TO INVOKE THE COURT'S SPECIAL JURISDICTION.— Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme. Contrary to this concept, the complaint presented a reverse situation. No corporate power or office was alleged to have facilitated the transfer of the shares; rather, Oscar, as an individual and without reference to his corporate personality, was alleged to have transferred the shares of Anastacia to his name, allowing him to become the majority and controlling stockholder of Zenith, and eventually, the corporation's President. In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such defect can be cured by a bill of particulars. In cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies, however, a bill of particulars is a prohibited pleading. It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate

acts if the complainant wishes to invoke the court's special commercial jurisdiction. We note that twice in the course of this case, Rodrigo had been given the opportunity to study the propriety of amending or withdrawing the complaint, but he consistently refused. The court's function in resolving issues of jurisdiction is limited to the review of the allegations of the complaint and, on the basis of these allegations, to the determination of whether they are of such nature and subject that they fall within the terms of the law defining the court's jurisdiction. Regretfully, we cannot read into the complaint any specifically alleged corporate fraud that will call for the exercise of the court's special commercial jurisdiction. Thus, we cannot affirm the RTC's assumption of jurisdiction over Rodrigo's complaint on the basis of Section 5(a) of P.D. No. 902-A.

3. ID.; ID.; ID.; INTRA-CORPORATE CONTROVERSY; TYPES OF INTRA-CORPORATE RELATIONS THE EXISTENCE OF WHICH IS SUFFICIENT TO CONFER JURISDICTION TO THE SECURITIES AND EXCHANGE COMMISSION REGARDLESS OF THE SUBJECT MATTER OF THE DISPUTE.— In the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.,* the Court introduced the **nature of the controversy test**. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute. Under the nature of the controversy test, the *incidents* of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

4. ID.; ID.; ID.; "TWO-TIER TEST"; JURISDICTION SHOULD BE DETERMINED BY CONSIDERING NOT ONLY THE STATUS OR RELATIONSHIP OF THE PARTIES BUT ALSO THE NATURE OF THE QUESTION UNDER CONTROVERSY.— The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution, Inc. v. Court of Appeals*. To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy. The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are 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 franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. Given these standards, we now tackle the question posed for our determination under the specific circumstances of this case:

5. ID.; ID.; ID.; RESPONDENT'S COMPLAINT FAILS THE "RELATIONSHIP TEST" CONSIDERING THAT HE IS NOT A STOCKHOLDER OF THE CORPORATION; REASONS.— Rodrigo must hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. *First*, he must prove that there are shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. *Second*, he must register the transfer of

the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and *prima facie* ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court. In sum, we find that — insofar as the subject shares of stock (*i.e.*, Anastacia's shares) are concerned — Rodrigo cannot be considered a stockholder of Zenith. Consequently, we cannot declare that an intra-corporate relationship exists that would serve as basis to bring this case within the special commercial court's jurisdiction under Section 5(b) of PD 902-A, as amended. Rodrigo's complaint, therefore, fails the relationship test.

6. **ID.; ID.; ID.; NATURE OF THE PRESENT CONTROVERSY WHICH IS THE DETERMINATION AND DISTRIBUTION OF SUCCESSIONAL RIGHTS IS NOT ONE OF WHICH MAY BE CLASSIFIED AS AN INTRA-CORPORATE DISPUTE AND IS BEYOND THE JURISDICTION OF THE SPECIAL COMMERCIAL COURT.—** More than the matters of injury and redress, what Rodrigo clearly aims to accomplish through his allegations of illegal acquisition by Oscar is the distribution of Anastacia's shareholdings without a prior settlement of her estate — an objective that, by law and established jurisprudence, cannot be done. The RTC of Makati, acting as a special commercial court, has no jurisdiction to settle, partition, and distribute the estate of a deceased. A relevant provision — Section 2 of Rule 90 of the Revised Rules of Court — that contemplates properties of the decedent held by one of the heirs declares: **Questions as to advancement** made or alleged to have been made by the deceased to any heir **may be heard and determined by the court having jurisdiction of the estate proceedings**; and the final order of the court thereon shall be binding on the person raising the questions and on the heir. Worth noting are this Court's statements in the case of *Natcher v. Court of Appeals:* **Matters which involve settlement and distribution of the estate of the**

decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction. x x x It is clear that trial **courts trying an ordinary action cannot resolve to perform acts pertaining to a special proceeding** because it is subject to specific prescribed rules. That an accounting of the funds and assets of Zenith to determine the extent and value of Anastacia's shareholdings will be undertaken by a probate court and not by a special commercial court is completely consistent with the probate court's limited jurisdiction. It has the power to enforce an accounting as a necessary means to its authority to determine the properties included in the inventory of the estate to be administered, divided up, and distributed. Beyond this, the determination of title or ownership over the subject shares (whether belonging to Anastacia or Oscar) may be *conclusively settled* by the probate court as a question of collation or advancement. We had occasion to recognize the court's authority to act on questions of title or ownership in a collation or advancement situation in *Coca v. Pangilinan* where we ruled: xxx **Although generally, a probate court may not decide a question of title or ownership, yet if** the interested parties are all heirs, or **the question is one of collation or advancement**, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, **the probate court is competent to decide the question of ownership**. In sum, we hold that the *nature* of the present controversy is not one which may be classified as an intra-corporate dispute and is beyond the jurisdiction of the special commercial court to resolve. In short, Rodrigo's complaint also fails the nature of the controversy test.

7. ID.; CORPORATIONS; DERIVATIVE SUIT; ALLEGATIONS OF THE PRESENT COMPLAINT DOES NOT AMOUNT TO A DERIVATIVE SUIT; NO INJURY, ACTUAL OR THREATENED, ALLEGED TO HAVE BEEN DONE TO THE CORPORATION DUE TO PETITIONER'S ACT.— Rodrigo's bare claim that the complaint is a derivative suit will not suffice to confer jurisdiction on the RTC (as a special commercial court) if he cannot comply with the requisites for the existence of a derivative suit. These requisites are: a. the party bringing suit should be a shareholder during the time of the act or transaction complained of, the number of shares not being material; b. the party has tried to exhaust intra-

corporate remedies*, i.e.,* has made a demand on the board of directors for the appropriate relief, but the latter has failed or refused to heed his plea; and c. the cause of action actually devolves on the corporation; the wrongdoing or harm having been or being caused to the corporation and not to the particular stockholder bringing the suit. Based on these standards, we hold that the allegations of the present complaint do not amount to a derivative suit. *First*, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as transferee-heir whose rights to the share are inchoate and unrecorded. With respect to his own individually-held shareholdings, Rodrigo has not alleged any individual cause or basis as a shareholder on record to proceed against Oscar. *Second*, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies *within the corporation* by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied. Paragraph 8 of the complaint hardly satisfies this requirement since what the rule contemplates is the exhaustion of remedies *within* the corporate setting: 8. As members of the same family, complainant Rodrigo C. Reyes has resorted [to] and exhausted all legal means of resolving the dispute with the end view of amicably settling the case, but the dispute between them ensued. *Lastly*, we find no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith. As already mentioned, neither has Rodrigo alleged any particular cause or wrongdoing against the corporation that he can champion in his capacity as a shareholder on record. In summary, whether as an individual or as a derivative suit, the RTC — sitting as special commercial court — has no jurisdiction to hear Rodrigo's complaint since what is involved is the determination and distribution of successional rights to the shareholdings of Anastacia Reyes. Rodrigo's proper remedy, under the circumstances, is to institute a special proceeding for the settlement of the estate of the deceased Anastacia Reyes, a move that is not foreclosed by the dismissal of his present complaint.

APPEARANCES OF COUNSEL

Santos Parungao Aquino & Santos Law Offices and *Benjamin C. Santos & Ray Montri C. Santos Law Offices* for petitioner.

Job B. Madayag for private respondents.

D E C I S I O N

BRION, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the Decision of the Court of Appeals (*CA)*[1] promulgated on May 26, 2004 in CA-G.R. SP No. 74970. The CA Decision affirmed the Order of the Regional Trial Court (*RTC*), Branch 142, Makati City dated November 29, 2002[2] in Civil Case No. 00-1553 (entitled "Accounting of All Corporate Funds and Assets, and Damages") which denied petitioner Oscar C. Reyes' (*Oscar*) Motion to Declare Complaint as Nuisance or Harassment Suit.

BACKGROUND FACTS

Oscar and private respondent Rodrigo C. Reyes (*Rodrigo*) are two of the four children of the spouses Pedro and Anastacia Reyes. Pedro, Anastacia, Oscar, and Rodrigo each owned shares of stock of Zenith Insurance Corporation (*Zenith*), a domestic corporation established by their family. Pedro died in 1964, while Anastacia died in 1993. Although Pedro's estate was judicially partitioned among his heirs sometime in the 1970s, no similar settlement and partition appear to have been made with Anastacia's estate, which included her shareholdings in Zenith. As of June 30, 1990, Anastacia owned 136,598 shares of Zenith; Oscar and Rodrigo owned 8,715,637 and 4,250 shares, respectively.[3]

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Romeo A. Brawner (deceased) and Associate Justice Aurora Santiago-Lagman, concurring; *rollo*, pp. 55-60.

[2] Quoted in full in Petition, *id.*, p. 18.

[3] *Id.,* p. 64.

On May 9, 2000, Zenith and Rodrigo filed a complaint[4] with the Securities and Exchange Commission (*SEC*) against Oscar, docketed as SEC Case No. 05-00-6615. The complaint stated that it is *"a derivative suit initiated and filed by the complainant Rodrigo C. Reyes* ***to obtain an accounting of the funds and assets of ZENITH*** *INSURANCE CORPORATION which are now or formerly in the control, custody, and/or possession of respondent [herein petitioner Oscar] and* ***to determine the shares of stock of deceased spouses Pedro and Anastacia Reyes*** *that were arbitrarily and fraudulently appropriated [by Oscar] for himself [and] which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased spouses, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares."*[5] [Emphasis supplied.]

In his Answer with Counterclaim,[6] Oscar denied the charge that he illegally acquired the shares of Anastacia Reyes. He asserted, as a defense, that he purchased the subject shares with his own funds from the unissued stocks of Zenith, and that the suit is not a *bona fide* derivative suit because the requisites therefor have not been complied with. He thus questioned the SEC's jurisdiction to entertain the complaint because it pertains to the settlement of the estate of Anastacia Reyes.

When Republic Act (*R.A.*) No. 8799[7] took effect, the SEC's exclusive and original jurisdiction over cases enumerated in Section 5 of Presidential Decree (*P.D.*) No. 902-A was

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[4] *Id.,* pp. 63-74.

[5] *Id.*, p. 65.

[6] *Id.,* pp. 92-115.

[7] Section 5.2 thereof states: The Commission's jurisdiction over all cases enumerated under Section 5 of P.D. 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. x x x.

transferred to the RTC designated as a special commercial court.[8] The records of Rodrigo's SEC case were thus turned over to the RTC, Branch 142, Makati, and docketed as Civil Case No. 00-1553.

On October 22, 2002, Oscar filed a Motion to Declare Complaint as Nuisance or Harassment Suit.[9] He claimed that the complaint is a mere nuisance or harassment suit and should, according to the Interim Rules of Procedure for Intra-Corporate Controversies, be dismissed; and that it is not a *bona fide* derivative suit as it partakes of the nature of a petition for the settlement of estate of the deceased Anastacia that is outside the jurisdiction of a special commercial court. The RTC, in its Order dated November 29, 2002 (*RTC Order*), denied the motion in part and declared:

> A close reading of the Complaint disclosed the presence of two (2) causes of action, namely: a) a derivative suit for accounting of the funds and assets of the corporation which are in the control, custody, and/or possession of the respondent [herein petitioner Oscar] with prayer to appoint a management committee; and b) an action for determination of the shares of stock of deceased spouses Pedro and Anastacia Reyes allegedly taken by respondent, its accounting and the corresponding delivery of these shares to the parties' brothers and sisters. The latter is not a derivative suit and should properly be threshed out in a petition for settlement of estate.
>
> Accordingly, the motion is denied. However, only the derivative suit consisting of the first cause of action will be taken cognizance of by this Court.[10]

Oscar thereupon went to the CA on a petition for *certiorari*, prohibition, and *mandamus*[11] and prayed that the RTC Order be annulled and set aside and that the trial court be prohibited from continuing with the proceedings. The appellate court

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[8] Per A.M. No. 00-11-03 SC dated November 21, 2000.

[9] *Rollo*, pp. 119-132.

[10] *Supra* note 2.

[11] Under Rule 65 of the Revised Rules of Court, *rollo*, pp. 11-49.

affirmed the RTC Order and denied the petition in its Decision dated May 26, 2004. It likewise denied Oscar's motion for reconsideration in a Resolution dated October 21, 2004.

Petitioner now comes before us on appeal through a petition for review on *certiorari* under Rule 45 of the Rules of Court.

ASSIGNMENT OF ERRORS

Petitioner Oscar presents the following points as conclusions the CA should have made:

1. that the complaint is a mere nuisance or harassment suit that should be dismissed under the Interim Rules of Procedure of Intra-Corporate Controversies; and
2. that the complaint is not a *bona fide* derivative suit but is in fact in the nature of a petition for settlement of estate; hence, it is outside the jurisdiction of the RTC acting as a special commercial court.

Accordingly, he prays for the setting aside and annulment of the CA decision and resolution, and the dismissal of Rodrigo's complaint before the RTC.

THE COURT'S RULING

We find the petition meritorious.

The core question for our determination is whether the trial court, sitting as a special commercial court, has jurisdiction over the subject matter of Rodrigo's complaint. To resolve it, we rely on the judicial principle that "jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations of the complaint, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein."[12]

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[12] *Speed Distributing Corp. v. Court of Appeals*, G.R. No. 149351, March 17, 2004, 425 SCRA 691; *Intestate Estate of Alexander Ty v. Court of Appeals*, G.R. No. 112872, April 19, 2001, 356 SCRA 661.

JURISDICTION OF SPECIAL COMMERCIAL COURTS

P.D. No. 902-A enumerates the cases over which the SEC (now the RTC acting as a special commercial court) exercises exclusive jurisdiction:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnership, 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 or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, 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; and

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

The allegations set forth in Rodrigo's complaint principally invoke Section 5, paragraphs (a) and (b) above as basis for the exercise of the RTC's special court jurisdiction. Our focus in examining the allegations of the complaint shall therefore be on these two provisions.

Fraudulent Devices and Schemes

The rule is that a complaint must contain a plain, concise, and direct statement of the ultimate facts constituting the plaintiff's

cause of action and must specify the relief sought.[13] Section 5, Rule 8 of the Revised Rules of Court provides that **in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity**.[14] These rules find specific application to Section 5(a) of P.D. No. 902-A which speaks of corporate devices or schemes that amount to fraud or misrepresentation detrimental to the public and/or to the stockholders.

In an attempt to hold Oscar responsible for corporate fraud, Rodrigo alleged in the complaint the following:

3. This is a **complaint…to determine the shares of stock of the deceased spouses Pedro and Anastacia Reyes that were arbitrarily and fraudulently appropriated for himself [herein petitioner Oscar]** which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased Spouses Pedro and Anastacia Reyes, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares with the corresponding equivalent amount of ₱7,099,934.82 plus interest thereon from 1978 representing his obligations to the Associated Citizens' Bank that was paid for his account by his late mother, Anastacia C. Reyes. This amount was not collated or taken into account in the partition or distribution of the estate of their late mother, Anastacia C. Reyes.

3.1. **Respondent Oscar C. Reyes, through other schemes of fraud including misrepresentation, unilaterally, and for his own benefit, capriciously transferred and took possession and control of the management of Zenith** Insurance Corporation which is considered as a family corporation, and other properties and businesses belonging to Spouses Pedro and Anastacia Reyes.

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[13] See REVISED RULES OF COURT, Rule 6, Section 1; Rule 7 Section 2(c); and Rule 8, Section 1.

[14] *Abad v. CFI Pangasinan*, G.R. No. 58507-08, February 26, 1992, 206 SCRA 567, 580.

4.1. During the increase of capitalization of Zenith Insurance Corporation, sometime in 1968, the property covered by TCT No. 225324 was illegally and fraudulently used by respondent as a collateral.

x x x x x x x x x

5. The complainant Rodrigo C. Reyes discovered that **by some manipulative scheme, the shareholdings of their deceased mother, Doña Anastacia C. Reyes, shares of stocks and [sic] valued in the corporate books at ₱7,699,934.28, more or less,** excluding interest and/or dividends, **had been transferred solely in the name of respondent**. By such fraudulent manipulations and misrepresentation, the shareholdings of said respondent Oscar C. Reyes abruptly increased to ₱8,715,637.00 [sic] and becomes [sic] the majority stockholder of Zenith Insurance Corporation, which portion of said shares must be distributed equally amongst the brothers and sisters of the respondent Oscar C. Reyes including the complainant herein.

x x x x x x x x x

9.1 The **shareholdings of deceased** Spouses Pedro Reyes and **Anastacia C. Reyes valued at ₱7,099,934.28 were illegally and fraudulently transferred solely to the respondent's [herein petitioner Oscar] name and installed himself as a majority stockholder of Zenith** Insurance Corporation [and] thereby deprived his brothers and sisters of their respective equal shares thereof including complainant hereto.

x x x x x x x x x

10.1 **By refusal of the respondent to account of his [sic] shareholdings in the company, he illegally and fraudulently transferred solely in his name wherein [sic] the shares of stock of the deceased Anastacia C. Reyes [which] must be properly collated and/or distributed equally amongst the children, including the complainant Rodrigo C. Reyes herein, to their damage and prejudice.**

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11.1 By continuous refusal of the respondent to account of his [sic] shareholding with Zenith Insurance Corporation[,] particularly the number of shares of stocks illegally and fraudulently transferred

to him from their deceased parents Sps. Pedro and Anastacia Reyes[,] which are all subject for collation and/or partition in equal shares among their children. [Emphasis supplied.]

Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action.[15] The late Justice Jose Feria, a noted authority in Remedial Law, declared that fraud and mistake are required to be averred with particularity in order to enable the opposing party to controvert the particular facts allegedly constituting such fraud or mistake.[16]

Tested against these standards, we find that the charges of fraud against Oscar were not properly supported by the required factual allegations. While the complaint contained allegations of fraud purportedly committed by him, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged appropriation of shares can be characterized as "illegal and fraudulent" were not explained nor elaborated on.

Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme. Contrary to this concept, the complaint presented a reverse situation. No corporate power or office was alleged to have facilitated the transfer of the shares; rather, Oscar, as an individual and without reference to his corporate personality, was alleged to have transferred the shares of Anastacia to his name, allowing him to become the majority

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[15] *Santos v. Liwag*, G.R. No. L-24238, November 28, 1980, 101 SCRA 327.

[16] Civil Procedure Annotated, Vol. 1 (2001 ed.), p. 303.

and controlling stockholder of Zenith, and eventually, the corporation's President. This is the essence of the complaint read as a whole and is particularly demonstrated under the following allegations:

> 5. The complainant Rodrigo C. Reyes discovered that by some manipulative scheme, the shareholdings of their deceased mother, Doña Anastacia C. Reyes, shares of stocks and [sic] valued in the corporate books at ₱7,699,934.28, more or less, excluding interest and/or dividends, had been transferred solely in the name of respondent. **By such fraudulent manipulations and misrepresentation, the shareholdings of said respondent Oscar C. Reyes abruptly increased to ₱8,715,637.00 [sic] and becomes [sic] the majority stockholder of Zenith Insurance Corporation,** which portion of said shares must be distributed equally amongst the brothers and sisters of the respondent Oscar C. Reyes including the complainant herein.
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> x x x x x x x x x
>
> 9.1 **The shareholdings of** deceased Spouses Pedro Reyes and **Anastacia C. Reyes** valued at ₱7,099,934.28 **were illegally and fraudulently transferred solely to the respondent's [herein petitioner Oscar] name and installed himself as a majority stockholder of Zenith** Insurance Corporation [and] thereby deprived his brothers and sisters of their respective equal shares thereof including complainant hereto. [Emphasis supplied.]

In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such defect can be cured by a bill of particulars. In cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies, however, a bill of particulars is a prohibited pleading.[17] It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction.

We note that twice in the course of this case, Rodrigo had been given the opportunity to study the propriety of amending or withdrawing the complaint, but he consistently refused. The

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[17] Rule 1, Section 8(2).

court's function in resolving issues of jurisdiction is limited to the review of the allegations of the complaint and, on the basis of these allegations, to the determination of whether they are of such nature and subject that they fall within the terms of the law defining the court's jurisdiction. Regretfully, we cannot read into the complaint any specifically alleged corporate fraud that will call for the exercise of the court's special commercial jurisdiction. Thus, we cannot affirm the RTC's assumption of jurisdiction over Rodrigo's complaint on the basis of Section 5(a) of P.D. No. 902-A.[18]

Intra-Corporate Controversy

A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties.[19] The types of relationships embraced under Section 5(b), as declared in the case of *Union Glass & Container Corp. v. SEC*,[20] were as follows:

a) between the corporation, partnership, or association and the public;

b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;

c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and

d) among the stockholders, partners, or associates themselves. [Emphasis supplied.]

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[18] Referring specifically to corporate fraud; see quoted provision at page 5 hereof.

[19] See *Sunset View Condominium Corp. v. Campos, Jr.*, 104 SCRA 295; *Philex Mining Corp. v. Reyes*, 118 SCRA 502; *Desa Enterprises, Inc. v. SEC*, 117 SCRA 321.

[20] G.R. No. 64013, November 28, 1983, 126 SCRA 31.

The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC, regardless of the subject matter of the dispute. This came to be known as the **relationship test**.

However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.,*[21] the Court introduced the **nature of the controversy test.** We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the *incidents* of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate.[22] The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy.[23] This two-tier test was adopted

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[21] G.R. No. 57936, September 28, 1984, 132 SCRA 293.

[22] *PSBA v. Leaño,* G.R. No. 58468, February 24, 1984, 127 SCRA 778, 783.

[23] *CMH Agricultural Corporation v. Court of Appeals,* G.R. No. 112625, March 7, 2002, 378 SCRA 545.

in the recent case of *Speed Distribution, Inc. v. Court of Appeals:*[24]

> To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.
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> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are 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 franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

Given these standards, we now tackle the question posed for our determination under the specific circumstances of this case:

Application of the Relationship Test

Is there an intra-corporate relationship between the parties that would characterize the case as an intra-corporate dispute?

We point out at the outset that while Rodrigo holds shares of stock in Zenith, he holds them in two capacities: in his own right with respect to the 4,250 shares registered in his name, and as one of the heirs of Anastacia Reyes with respect to the 136,598 shares registered in her name. What is material in resolving the issues of this case under the allegations of the complaint is Rodrigo's *interest as an heir* since the subject matter of the present controversy centers on the shares of stocks belonging to Anastacia, not on Rodrigo's personally-owned shares

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[24] *Speed Distributing Corp., v. Court of Appeals*, *supra* note 12.

nor on his personality as shareholder owning these shares. In this light, all reference to shares of stocks in this case shall pertain to the shareholdings of the deceased Anastacia and the parties' interest therein as her heirs.

Article 777 of the Civil Code declares that the successional rights are transmitted from the moment of death of the decedent. Accordingly, upon Anastacia's death, her children acquired legal title to her estate (which title includes her shareholdings in Zenith), and they are, prior to the estate's partition, deemed co-owners thereof.[25] This status as co-owners, however, does not immediately and necessarily make them stockholders of the corporation. Unless and until there is compliance with Section 63 of the Corporation Code on the manner of transferring shares, the heirs do not become registered stockholders of the corporation. Section 63 provides:

Section 63. *Certificate of stock and transfer of shares.*— The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. **No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates, and the number of shares transferred.** [Emphasis supplied.]

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

Simply stated, the transfer of title by means of succession, though effective and valid between the parties involved (*i.e.*, between the decedent's estate and her heirs), does not bind the

[25] Article 1078 of the Civil Code states: Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

corporation and third parties. The transfer must be registered in the books of the corporation to make the transferee-heir a stockholder entitled to recognition as such both by the corporation and by third parties.[26]

We note, in relation with the above statement, that in *Abejo v. Dela Cruz*[27] and *TCL Sales Corporation v. Court of Appeals*[28] we did not require the registration of the transfer before considering the transferee a stockholder of the corporation (in effect upholding the existence of an intra-corporate relation between the parties and bringing the case within the jurisdiction of the SEC as an intra-corporate controversy). A marked difference, however, exists between these cases and the present one.

In *Abejo* and *TCL Sales*, the transferees held **definite and uncontested titles to a specific number of shares of the corporation**; after the transferee had established *prima facie* ownership over the shares of stocks in question, registration became a mere formality in confirming their status as stockholders. In the present case, each of Anastacia's heirs holds only an undivided interest in the shares. This interest, at this point, is still inchoate and subject to the outcome of a settlement proceeding; the right of the heirs to specific, distributive shares of inheritance will not be determined until all the debts of the estate of the decedent are paid. In short, the heirs are only entitled to what remains after payment of the decedent's debts;[29] whether there will be residue remains to be seen. Justice Jurado aptly puts it as follows:

No succession shall be declared unless and until a liquidation of the assets and debts left by the decedent shall have been made and

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[26] Additionally, Section 97 of the National Internal Revenue Code requires a certification from the Commissioner of Internal Revenue that the estate taxes have been paid before any shares in a domestic corporation is transferred in the name of the new owner.

[27] G.R. No. 63558, May 19, 1987, 149 SCRA 654.

[28] G.R. No. 129777, January 5, 2001, 349 SCRA 35.

[29] *Salvador v. Sta. Maria*, G.R. No. L-25952, June 30, 1967, 20 SCRA 603.

all his creditors are fully paid. Until a final liquidation is made and all the debts are paid, the right of the heirs to inherit remains inchoate. This is so because under our rules of procedure, **liquidation is necessary in order to determine whether or not the decedent has left any liquid assets which may be transmitted to his heirs.**[30] [Emphasis supplied.]

Rodrigo must, therefore, hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. *First*, he must prove that there are shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. *Second*, he must register the transfer of the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and *prima facie* ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court.

In sum, we find that — insofar as the subject shares of stock (*i.e.,* Anastacia's shares) are concerned — Rodrigo cannot be considered a stockholder of Zenith. Consequently, we cannot declare that an intra-corporate relationship exists that would serve as basis to bring this case within the special commercial court's jurisdiction under Section 5(b) of PD 902-A, as amended. Rodrigo's complaint, therefore, fails the relationship test.

Application of the Nature of Controversy Test

The body rather than the title of the complaint determines the nature of an action.[31] Our examination of the complaint

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[30] Comments and Jurisprudence on Succession (1991 ed.), p. 5.

[31] 13 Fletcher §5912.

yields the conclusion that, more than anything else, the complaint is about the protection and enforcement of successional rights. The controversy it presents is purely civil rather than corporate, although it is denominated as a "complaint for accounting of all corporate funds and assets."

Contrary to the findings of both the trial and appellate courts, we read only one cause of action alleged in the complaint. The "derivative suit for accounting of the funds and assets of the corporation which are in the control, custody, and/or possession of the respondent [herein petitioner Oscar]" does not constitute a separate cause of action but is, as correctly claimed by Oscar, only an incident to the "action for determination of the shares of stock of deceased spouses Pedro and Anastacia Reyes allegedly taken by respondent, its accounting and the corresponding delivery of these shares to the parties' brothers and sisters." There can be no mistake of the relationship between the "accounting" mentioned in the complaint and the objective of partition and distribution when Rodrigo claimed in paragraph 10.1 of the complaint that:

> 10.1 By refusal of the respondent to account of [sic] his shareholdings in the company, he illegally and fraudulently transferred solely in his name wherein [sic] the shares of stock of the deceased Anastacia C. Reyes [which] must be properly collated and/or distributed equally amongst the children including the complainant Rodrigo C. Reyes herein to their damage and prejudice.

We particularly note that the complaint contained no sufficient allegation that justified the need for an accounting *other than* to determine the extent of Anastacia's shareholdings for purposes of distribution.

Another significant indicator that points us to the real nature of the complaint are Rodrigo's repeated claims of illegal and fraudulent transfers of Anastacia's shares by Oscar to the prejudice of the other heirs of the decedent; he cited these allegedly fraudulent acts as basis for his demand for the collation and distribution of Anastacia's shares to the heirs. These claims tell us unequivocally that the present controversy arose from

the parties' relationship *as heirs* of Anastacia and *not as shareholders of Zenith*. Rodrigo, in filing the complaint, is enforcing his rights as a co-heir and not as a stockholder of Zenith. The injury he seeks to remedy is one suffered by an heir (for the impairment of his successional rights) and not by the corporation nor by Rodrigo as a shareholder on record.

More than the matters of injury and redress, what Rodrigo clearly aims to accomplish through his allegations of illegal acquisition by Oscar is the distribution of Anastacia's shareholdings without a prior settlement of her estate — an objective that, by law and established jurisprudence, cannot be done. The RTC of Makati, acting as a special commercial court, has no jurisdiction to settle, partition, and distribute the estate of a deceased. A relevant provision — Section 2 of Rule 90 of the Revised Rules of Court — that contemplates properties of the decedent held by one of the heirs declares:

> **Questions as to advancement** made or alleged to have been made by the deceased to any heir **may be heard and determined by the *court having jurisdiction of the estate proceedings***; and the final order of the court thereon shall be binding on the person raising the questions and on the heir. [Emphasis supplied.]

Worth noting are this Court's statements in the case of *Natcher v. Court of Appeals:*[32]

> **Matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court** in the exercise of its limited jurisdiction.
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> x x x x x x x x x
>
> It is clear that trial **courts trying an ordinary action cannot resolve to perform acts pertaining to a special proceeding** because it is subject to specific prescribed rules. [Emphasis supplied.]

That an accounting of the funds and assets of Zenith to determine the extent and value of Anastacia's shareholdings will be undertaken by a probate court and not by a special

[32] G.R. 133000, October 2, 2001, 366 SCRA 385, 392.

commercial court is completely consistent with the probate court's limited jurisdiction. It has the power to enforce an accounting as a necessary means to its authority to determine the properties included in the inventory of the estate to be administered, divided up, and distributed. Beyond this, the determination of title or ownership over the subject shares (whether belonging to Anastacia or Oscar) may be *conclusively settled* by the probate court as a question of collation or advancement. We had occasion to recognize the court's authority to act on questions of title or ownership in a collation or advancement situation in *Coca v. Pangilinan*[33] where we ruled:

> It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice "which may be waived."
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> As a general rule, the question as to title to property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience.
>
> Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action.
>
> **Although generally, a probate court may not decide a question of title or ownership, yet if** the interested parties are all heirs, or **the question is one of collation or advancement**, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired**, the probate court is competent to decide the question of ownership**. [Citations omitted. Emphasis supplied.]

In sum, we hold that the *nature* of the present controversy is not one which may be classified as an intra-corporate dispute and is beyond the jurisdiction of the special commercial court to resolve. In short, Rodrigo's complaint also fails the nature of the controversy test.

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[33] G.R. No. L-27082, January 21, 1978, 81 SCRA 278.

DERIVATIVE SUIT

Rodrigo's bare claim that the complaint is a derivative suit will not suffice to confer jurisdiction on the RTC (as a special commercial court) if he cannot comply with the requisites for the existence of a derivative suit. These requisites are:

a. the party bringing suit should be a shareholder during the time of the act or transaction complained of, the number of shares not being material;

b. the party has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief, but the latter has failed or refused to heed his plea; and

c. the cause of action actually devolves on the corporation; the wrongdoing or harm having been or being caused to the corporation and not to the particular stockholder bringing the suit.[34]

Based on these standards, we hold that the allegations of the present complaint do not amount to a derivative suit.

First, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as a transferee-heir whose rights to the share are inchoate and unrecorded. With respect to his own individually-held shareholdings, Rodrigo has not alleged any individual cause or basis as a shareholder on record to proceed against Oscar.

Second, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies *within the corporation* by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied.[35] Paragraph 8 of the complaint hardly satisfies this requirement since what the rule contemplates is the exhaustion of remedies *within* the corporate setting:

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[34] Villanueva, C., *Philippine Corporate Law* (1998 ed.), p. 370.

[35] 13 Fletcher §5963.

8. As members of the same family, complainant Rodrigo C. Reyes has resorted [to] and exhausted all legal means of resolving the dispute with the end view of amicably settling the case, but the dispute between them ensued.

Lastly, we find no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith. As already mentioned, neither has Rodrigo alleged any particular cause or wrongdoing against the corporation that he can champion in his capacity as a shareholder on record.[36]

In summary, whether as an individual or as a derivative suit, the RTC — sitting as special commercial court — has no jurisdiction to hear Rodrigo's complaint since what is involved is the determination and distribution of successional rights to the shareholdings of Anastacia Reyes. Rodrigo's proper remedy, under the circumstances, is to institute a special proceeding for the settlement of the estate of the deceased Anastacia Reyes, a move that is not foreclosed by the dismissal of his present complaint.

WHEREFORE, we hereby *GRANT* the petition and *REVERSE* the decision of the Court of Appeals dated May 26, 2004 in CA-G.R. SP No. 74970. The complaint before the Regional Trial Court, Branch 142, Makati, docketed as Civil Case No. 00-1553, is ordered *DISMISSED* for lack of jurisdiction.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

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[36] See 13 Fletcher §5915.

[*] Designated Additional Member of the Second Division per Special Order No. 512 dated July 16, 2008.

SECOND DIVISION

[G.R. No. 166904. August 11, 2008]

MEDIAN CONTAINER CORPORATION, *petitioner, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; A FORMAL NOT JURISDICTIONAL; REQUIREMENT; STRICT COMPLIANCE WITH THE RULES MAYBE DISPENSED WITH IN ORDER TO SERVE THE ENDS OF JUSTICE.—** Verification is a formal, not jurisdictional, requirement. It is simply intended to secure an assurance that the allegations in the pleading are true and correct, and that the pleading is filed in good faith. That explains why a court may order the correction of the pleading if verification is lacking, or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order to serve the ends of justice.

2. **ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; THE BOARD RESOLUTION AUTHORIZING THE SIGNATORY TO SIGN IN BEHALF OF THE CORPORATION IS DEEMED A RATIFICATION OF HIS PRIOR EXECUTION OF THE VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING AND CURED ANY DEFECTS THEREOF.—** As for the required certification against forum shopping, failure to comply therewith is generally not curable by its submission subsequent to the filing of the petition nor by amendment, and is cause for its dismissal. A certification against forum shopping signed by a person on behalf of a corporation which is unaccompanied by proof that the signatory is authorized to file the petition is generally likewise cause for dismissal. In several cases, however, this Court relaxed the application of these requirements upon appreciation of attendant special circumstances or compelling reasons. In the case at bar, simultaneous with the filing of the complaint, Metrobank

submitted both a certification of non-forum shopping and proof that Atty. Mendoza who signed it on its behalf was authorized to do so. The proof of authorization of Atty. Mendoza was dated later than the date of his signing of the certification of non-forum shopping, however, thus giving the impression that he, at the time he affixed his signature, was not authorized to do so. The passing on June 3, 2004 of a Board Resolution of authorization before the actual filing on June 23, 2004 of the complaint, however, is deemed a ratification of Atty. Mendoza's prior execution on May 28, 2004 of the verification and certificate of non-forum shopping, thus curing any defects thereof.

3. **ID.; ID.; SUMMONS; A CERTIFICATION OF SERVICE BY A PROPER OFFICER IS *PRIMA FACIE* EVIDENCE OF THE FACTS SET OUT THEREIN, AND THE PRESUMPTION ARISING FROM THE CERTIFICATE CAN ONLY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** A certificate of service by a proper officer is *prima facie* evidence of the facts set out therein, and the presumption arising from the certificate can only be overcome by clear and convincing evidence. To disprove that Ong was neither its General Manager or an employee of MCC at the time of the service of summons, MCC submitted before the trial court a photocopy of his purported July 31, 2003 resignation letter and a photocopy of an August 1, 2003 Quitclaim purportedly signed by him. MCC did not present the original copies of these documents. Be that as it may, the appellate court's *en passant* disposition of the questioned service of summons, *viz*: ". . . [W]e searched the records — particularly the motion to dismiss filed by the petitioner — for the reason why and how service was made on a former employee who was then at the correct address, who signed for the summons, and whom the process server identified as "general manager". We note that aside from the bare allegation that the court did not have jurisdiction due to improper service of summons, no statement was ever made to explain why a former employee was at petitioner's premises and ended up receiving the summons served by the process server. Truly, we wondered why a process server who apparently knew the technicalities of his duties so served the summons and then certified that service was upon the general manager, even naming Danilo Ong as the general manager. This aberrant turn of events

and the questions it raises convince us that we cannot view the service of summons in this case along the strict lines of *Villarosa* whose attendant facts are both simple and different. What should assume materiality here are the following circumstances: that the process server went to the correct address of the petitioner to serve the summons; that the summons was received at that address by a person who was there; ***that the petitioner does not dispute that it ultimately received the summons***; and that the process server certified in his return that service was duly made upon the general manager whom he identified as Danilo Ong who acknowledged receipt of the summons by signing on the lower portion thereof." persuades as this Court notes the dubious proof that Ong had resigned from MCC at the time the summons was served. Consider this: The signature attributed to Ong in the photocopy of his purported July 31, 2002 letter of resignation effective also on July 31, 2002, *and* the signature attributed to him in the photocopy of the August 1, 2002 Quitclaim he purportedly executed, appear to have been written by a hand different from that which affixed the signature attributed to him on the Summons.

APPEARANCES OF COUNSEL

Feria Feria La O' Tantoco for petitioner.
Perez & Calima Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent, Metropolitan Bank and Trust Company (Metrobank), filed a complaint for sum of money[1] on June 23, 2003 before the Regional Trial Court (RTC) of Makati against petitioner Median Container Corporation (MCC) and the spouses Carlos T. Ley and Fely C. Ley, Vice President/Treasurer of MCC for failure of MCC to settle the amount of more than ₱5,000,000 representing the outstanding balance of loans contracted by MCC, represented by Fely C. Ley.

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[1] Records, pp. 1-8.

Summonses addressed as follows to the defendants were issued on July 17, 2003 by Branch 22 of the Makati RTC:[2]

MEDIAN CONTAINER CORPORATION

Lot 421 C-4 Katipunan Road Extension, California Village, San Bartolome, Novaliches, Quezon City

CARLOS T. LEY AND FELY C. LEY
No. 14 Adams Street, West Greenhills, San Juan, Metro Manila (Underscoring supplied)

In the August 20, 2003 Process Server's Return,[3] no date of filing of which is indicated, process server George S. de Castro stated that Summons was served on MCC on August 7, 2003 at its given address upon one Danilo Ong (Ong) as shown by Ong's signature at the left bottom portion of the Summons, below which signature the process server wrote the words "General Manager."

In the same August 20, 2003 Process Server's Return, the process server stated that he was unable to serve the Summons upon the spouses Ley at their given address as they were no longer residing there. Summons was eventually served upon the spouses Ley.

On August 28, 2003, MCC filed a motion to dismiss[4] the complaint on the grounds of defective service of Summons over it and defective verification and certificate against non-forum shopping. The spouses Ley, upon the impression that the Summons was also served upon them through Ong, also filed a motion to dismiss on the same grounds as those of MCC's.

In its Motion to Dismiss, MCC alleged that, contrary to the statement in the August 20, 2003 Process Server's Return,[5] Ong, on whom the Summons was served, was not its General Manager, he being merely a former employee who had resigned

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[2] *Id.* at 17.

[3] *Id.* at 18. *Vide*, p. 17.

[4] *Id.* at 19-33.

[5] *Id.* at 52.

as of July 2002.[6] In support of its claim, MCC annexed to its motion photocopies of a resignation letter dated July 31, 2002 and a quitclaim dated August 1, 2002, both purportedly accomplished by Ong.[7]

Respecting its claim of defective verification and certificate of non-forum shopping, MCC questioned the authority of Atty. Alexander P. Mendoza to accomplish the same on behalf of Metrobank in this wise:

> . . . A careful perusal of the "authority" discloses that a certain Atty. Ramon S. Miranda delegated his authority to Atty. Mendoza to "sign the complaint and/or Verification and Certification of Non-Forum Shopping in the case entitled *MBTC v. Median Container Corporation and Spouses Carlos T. Ley and Fely C. Ley* filed before the RTC-Makati City. This authorization was **given only on June 03, 2003**.
>
> As previously discussed, Atty. Mendoza verified the complaint and signed the certification against forum shopping on **May 28, 2003**. Therefore, it is clear that Atty. **Mendoza did not have the proper authorization when he executed the verification and certification** against non-forum shopping because his authority came only at a later date, on June 03, 2003 or six days thereafter. In effect, there is no valid and effective verification and certification by plaintiff in its Complaint.[8] (Emphasis supplied; underscoring in the original)

By Order[9] of January 9, 2004, the trial court denied MCC's Motion to Dismiss. As for the spouses Ley's motion to dismiss, the trial court denied it for being premature. And the trial court denied too the movants' respective motions for reconsideration.[10]

The Process Server's Return dated April 12, 2004[11] states that *alias* Summons was served on the spouses Ley on March 31, 2004.

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[6] *Id.* at 27-29.

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

[8] *Id.* at 31. Relevant documents are on pp. 8-11.

[9] Records, p. 71.

[10] *Id.* at 72-76, 77-82, 96, 99.

[11] *Id.* at 98.

Only MCC went to the Court of Appeals via Petition for *Certiorari* filed on May 19, 2004 to assail the Order of the trial court denying its Motion to Dismiss and its Motion for Reconsideration, arguing in the main that the trial court "acted with grave abuse of discretion . . . considering that the Complaint failed to comply with Rule 7, Section 5 of the 1997 Rules of Civil Procedure, the Verification and Certification thereof having been signed and executed by one who had no authority to bind respondent Metrobank at the time of such signing and execution."[12]

As correctly defined by the appellate court, the issues raised by MCC were:

1) the alleged belated filing of Metrobank's Opposition, and

2) the alleged violation of Rule 7, Section 5 of the 1997 Rules of Civil Procedure regarding the verification/ certification against forum shopping.[13]

By the present challenged Decision of September 23, 2004,[14] the appellate court dismissed petitioner's petition for *certiorari*, holding that the trial court did not commit any abuse of discretion since "Atty. Mendoza was already clothed with the proper authority to sign the verification and certification through a Board's Resolution dated June 3, 2003 when the complaint was filed on June 23, 2003."[15]

Its definition of the issues raised by MCC notwithstanding, the appellate court found it necessary to pass upon the unraised issue of improper service of summons, it finding the same to be a "basic jurisdictional issue and if only to completely dispose

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[12] CA *rollo,* p. 13.

[13] *Id.* at 228.

[14] Penned by Justice Arturo D. Brion (now an associate member of the SC), with the concurrence of Justices Delilah Vidallon-Magtolis and Eliezer R. De los Santos, *id.* at 222-240.

[15] *Id.* at 234.

of th[e] incident and facilitate the prompt resolution of the main underlying case (sum of money)."[16]

Brushing aside the impropriety of service of Summons upon MCC, the Court of Appeals stated:

> The case invoked by [MCC] in support of its position that service of summons was improper, is *E.B. Villarosa & Partner Co., Ltd. v. Benito* where the Honorable Supreme Court ruled that the trial court did not acquire jurisdiction over the person of the petitioner (a partnership) where service of summons was made on a branch manager instead of the general manager at the partnership's principal office. . . .[17] (Emphasis in original)
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> x x x x x x x x x
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> After considering the facts and developments in this case in their totality, we believe — as the public respondent did — that the ruling in the cited *Villarosa* case should be applied with an eye on the unusual facts of the present case. We find it significant that the process server in this case certified that he served the summons upon the **"general manager"** of the petitioner. The process server apparently was fully aware of the strict requirements of the Rules as interpreted in the cited *Villarosa* case. The twist in the process certification is the petitioner's claim that Danilo Ong, the person who received the summons, was not the general manager but was a mere former employee. In other words, unlike in *Villarosa* where summons was served on the **branch manager** (a patently wrong party under the requirements of the Rules), there was, in the present case, the INTENTION on the part of the process server to observe the mandatory requirements on the services of summons and to serve it on the correct recipient.[18] (Emphasis in the original; capitalization and underscoring supplied)

Its Motion for Reconsideration[19] having been denied,[20] MCC filed the present Petition for Review on *Certiorari*[21] raising

[16] *Ibid.*

[17] *Id.* at 235.

[18] *Id.* at 237.

[19] *Id.* at 245-255.

[20] *Id.* at 286-290.

[21] *Rollo*, pp. 38-61.

the following issues including, this time, the impropriety of service of Summons upon it, thus, whether:

> . . . A COMPLAINT SHOULD PROPERLY BE DISMISSED FOR FAILURE TO COMPLY WITH RULE 7, SECTON 5 OF THE 1997 RULES OF CIVIL PROCEDURE, THE VERIFICATION AND CERTIFICATION PORTION THEREOF HAVING BEEN SIGNED AND EXECUTED BY ONE WHO HAD NO AUTHORITY TO BIND THE PARTY-PLAINTIFF AT THE TIME OF SUCH SIGNING AND EXECUTION;
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> . . . IT IS FULL COMPLIANCE WITH RULE 14, SECTION 11 OF THE 1997 RULES OF CIVIL PROCEDURE, OR THE MERE INTENTION OF THE PROCESS SERVER TO SERVE THE SUMMONS ON THE INTENDED RECIPIENT, THAT DETERMINES THE VALIDITY OF SERVICE OF SUMMONS WHEN THE DEFENDANT IS A DOMESTIC PRIVATE CORPORATION; and
>
> . . . IT IS THE ACTUAL RECEIPT OF THE SUMMONS, OR THE VALID SERVICE OF SUMMONS IN ACCORDANCE WITH THE RULES, THAT VESTS THE TRIAL COURT WITH JURISDICTION OVER THE PERSON OF THE DEFENDANT.[22] (Underscoring supplied)

Verification is a formal, not jurisdictional, requirement.[23] It is simply intended to secure an assurance that the allegations in the pleading are true and correct, and that the pleading is filed in good faith.[24] That explains why a court may order the correction of the pleading if verification is lacking, or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order to serve the ends of justice.[25]

As for the required certification against forum shopping, failure to comply therewith is generally not curable by its submission

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

[23] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 994 (2001), citation omitted.

[24] *Id.* at 995.

[25] *Ibid.*

subsequent to the filing of the petition nor by amendment, and is cause for its dismissal.[26] A certification against forum shopping signed by a person on behalf of a corporation which is unaccompanied by proof that the signatory is authorized to file the petition[27] is generally likewise cause for dismissal. In several cases, however, this Court relaxed the application of these requirements upon appreciation of attendant special circumstances or compelling reasons. *Shipside Incorporated v. Court of Appeals*[28] cites some of those instances:

> . . . In *Loyola v. Court of Appeals, et. al.* . . . , the Court considered the filing of the certification one day after the filing of an election protest as substantial compliance with the requirement. In *Roadway Express, Inc. v. Court of Appeals, et. al.* . . . , the Court allowed the filing of the certification 14 days before the dismissal of the petition. In *Uy v. LandBank*, . . . , the Court had dismissed Uy's petition for lack of verification and certification against non-forum shopping. However, it subsequently reinstated the petition after Uy submitted a motion to admit [verification] and non-forum shopping certification. In all these cases, there were special circumstances or compelling reasons that justified the relaxation of the rule requiring verification and certification on non-forum shopping.
>
> In the instant case, the **merits of petitioner's case** should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. Moreover, in *Loyola, Roadway,* and *Uy*, the Court excused *non-compliance* with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein *did submit a certification on non-forum shopping*, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.[29] (Emphasis and underscoring supplied)

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[26] RULES OF COURT, Rule 7, Section 5.

[27] Vide *Retro Drug Distribution, Inc. v. Narciso*, G.R. No. 147478, July 17, 2006, 445 SCRA 286, 292-293.

[28] *Supra* note 23.

[29] *Id.* at 995-996.

In the case at bar, simultaneous with the filing of the complaint, Metrobank submitted both a certification of non-forum shopping and proof that Atty. Mendoza who signed it on its behalf was authorized to do so. The proof of authorization of Atty. Mendoza was dated later than the date of his signing of the certification of non-forum shopping, however, thus giving the impression that he, at the time he affixed his signature, was not authorized to do so. The passing on June 3, 2004 of a Board Resolution of authorization before the actual filing on June 23, 2004 of the complaint, however, is deemed a ratification of Atty. Mendoza's prior execution on May 28, 2004 of the verification and certificate of non-forum shopping, thus curing any defects thereof.[30]

As for MCC's contention that the summons addressed to it was served on a wrong party, hence, the trial court did not acquire jurisdiction over it, the same fails.

A certificate of service by a proper officer is *prima facie* evidence of the facts set out therein, and the presumption arising from the certificate can only be overcome by clear and convincing evidence.[31]

To disprove that Ong was neither its General Manager or an employee of MCC at the time of the service of summons, MCC submitted before the trial court a photocopy of his purported July 31, 2003 resignation letter and a photocopy of an August 1, 2003 Quitclaim purportedly signed by him. MCC did not present

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[30] NEW CIVIL CODE Articles 1869 ("Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority." x x x) and 1910 ("x x x As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly."); *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 394 ("Ratification in agency is the adoption or confirmation of one person of an act performed on his behalf by another without authority. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority.")

[31] *Vide R. Transport Corporation v. Court of Appeals*, G.R. No. 111187, February 1, 1995, 241 SCRA 77, 81.

the original copies of these documents.[32] Be that as it may, the appellate court's *en passant* disposition of the questioned service of summons, *viz*:

> . . . [W]e searched the records — particularly the motion to dismiss filed by the petitioner — for the reason why and how service was made on a former employee who was then at the correct address, who signed for the summons, and whom the process server identified as "general manager". We note that aside from the bare allegation that the court did not have jurisdiction due to improper service of summons, no statement was ever made to explain why a former employee was at petitioner's premises and ended up receiving the summons served by the process server. Truly, we wondered why a process server who apparently knew the technicalities of his duties so served the summons and then certified that service was upon the general manager, even naming Danilo Ong as the general manager.
>
> This aberrant turn of events and the questions it raises convince us that we cannot view the service of summons in this case along the strict lines of *Villarosa* whose attendant facts are both simple and different. What should assume materiality here are the following circumstances: that the process server went to the correct address of the petitioner to serve the summons; that the summons was received at that address by a person who was there; ***that the petitioner does not dispute that it ultimately received the summons***; and that the process server certified in his return that service was duly made upon the general manager whom he identified as Danilo Ong who acknowledged receipt of the summons by signing on the lower portion thereof.[33] (Emphasis and italics in the original; underscoring supplied),

persuades as this Court notes the dubious proof that Ong had resigned from MCC at the time the summons was served. Consider this: The signature attributed to Ong in the photocopy of his purported July 31, 2002 letter of resignation effective also on July 31, 2002, *and* the signature attributed to him in the photocopy of the August 1, 2002 Quitclaim he purportedly executed, appear to have been written by a hand different from that which affixed the signature attributed to him on the Summons.

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[32] *Vide* RULES OF COURT, Rule 130, Section 3, Rule 132, Section 20.

[33] CA *rollo*, pp. 238-239.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] and *Velasco, Jr., JJ.,* concur.

Brion, J., no part; *ponente* of CA decision.

SECOND DIVISION

[G.R. No. 170406. August 11, 2008]

FOUZIY[**] **ALI BONDAGJY,** *petitioner, vs.* **SABRINA ARTADI,**[***] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF JUDGMENTS; *RES JUDICATA*; REQUISITES.—** For *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be, as between the first and second actions, identity of parties, of subject matter, and of causes of action.

2. **ID.; ID.; ID.; ID.; ID.; NO IDENTITY OF CAUSES OF ACTION; CASE AT BAR.—** The presence of the first three requisites is not disputed. The Third Shari'a Circuit Court had jurisdiction

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[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

[**] Spelled as "Fouzi" in some pleadings in the records and *rollo*.

[***] Also known as "Sabrina Artadi-Bondagjy."

over the first complaint-SCC Case No. 541, for divorce by *faskh.* And it had rendered a decision on the merits, which decision had become final. It is with respect to the presence of the fourth requisite — that there is identity of causes of action in SCC Case No. 541 and Civil Case No. 2005-111 — that the decision of the present petition hinges. The Court finds no such identity of causes of action. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action. If the same evidence would sustain both actions, they are considered the same and covered by the rule that the judgment in the former is a bar to the subsequent action.

3. **ID.; ID.; ID.; ID.; ID.; CAUSES OF ACTION IN THE TWO CASES ARE INDEPENDENT OF EACH OTHER, THE CIRCUMSTANCES RELATING TO NON-SUPPORT AND NON-PERFORMANCE OF MARITAL OBLIGATIONS BEING DISPARATE.—** From the material allegations in the two petitions, the Court finds that the causes of action are based on different periods during which petitioner allegedly neglected or failed to support his family and perform his marital obligations. SCC Case No. 541 which was dismissed on June 24, 1996 covered the period prior to March 1996 (the date of its filing), while Civil Case No. 2005-111 subject of the present petition which was filed on February 7, 2005 covered the period in the interim. In other words, in the first case, petitioner's alleged negligence and/or failure to support and perform his marital obligations occurred at least six months before March 1996. Whereas in the second case, similar grounds-bases of the cause of the action occurred at least six months before February 7, 2005. The causes of action in the two cases are thus independent of each other, the circumstances relating to non-support and non-performance of marital obligations being disparate.

4. **ID.; ID.; ID.; ID.; ID.; THE GROUNDS FOR NULLITY OF MARRIAGE UNDER THE FAMILY CODE ARE DISSIMILAR TO THE GROUNDS FOR DIVORCE BY *FASKH* UNDER THE CODE OF MUSLIM PERSONAL LAWS.—** As priorly discussed, the order dismissing SCC Case No. 541 does not constitute *res judicata* on Civil Case No. 2005-111 subject of the present case. Nor does the order

dismissing Civil Case No. 98-070, an action for declaration of absolute nullity of marriage under Article 36 of the Family Code. For the grounds for nullity of marriage under the Family Code are dissimilar to the grounds for divorce by *faskh* under the Code of Muslim Personal Laws. Besides, Civil Case No. 98-070 was, in the main, dismissed by the RTC of Muntinlupa for lack of jurisdiction over the person of petitioner and of respondent.

5. **ID.; ID.; SHARI'A COURTS PROCEDURE; SHARI'A COURTS ARE MANDATED TO ADHERE TO SOURCES OF MUSLIM LAW RELATING TO THE NUMBER, STATUS OR QUALITY OF WITNESSES AND EVIDENCE TO PROVE ANY FACT AND TO APPLY THE RULES OF COURT ONLY SUPPLETORILY.—** The Second Shari'a Circuit Court denied respondent's petition in Civil Case No. 2005-111 only after conducting a hearing of the affirmative defenses and a consideration of the memoranda submitted by the parties in connection therewith. In other words, the two courts did not conduct a formal hearing of respondent's petitions. The findings of the Second Shari'a Circuit Court were at best superficial, however, given the distinctiveness of Shari'a Court procedures. Thus, under Muslim Procedural Law, the Shari'a court is mandated to adhere to sources of Muslim Law relating to the number, status or quality of witnesses, and evidence required to prove any fact, and to apply the Rules of Court only suppletorily.

6. **ID.; ID.; MUSLIM LAW PLACES A PREMIUM ON TESTIMONIAL EVIDENCE AS MODE OF PROOF; DOCUMENTARY EVIDENCE IS CONSIDERED OUTSIDE THE MODE OF PROOFS, WHICH ARE TESTIMONY, ADMISSION AND OATH, BUT AT TIMES ACCEPTED AS SUBSTITUTE FOR ORAL TESTIMONY.—** By and large, jurisprudence on Muslim Law recognizes three kinds of evidence: first, *shahadah* or testimonial evidence; second, *igrar* or admission; and third, *yamin* or oath. Documentary evidence is considered outside the mode of proofs (*i.e.*, testimony, admission and oath), but at times accepted as substitute for oral testimony. Muslim Law thus places a premium on testimonial evidence as mode of proof. This unique legal precept a *fortiori* applies in the case at bar. For neglect or

failure to provide support and to perform one's marital obligations requires proof by substantial evidence, not by inference as what the judge of the Third Shari'a Circuit Court did as reflected in the earlier-quoted portions of his June 24, 1996 Order. Not infrequently, the testimonies and contra-declarations of the parties, the children or their witnesses are secured to prove their respective allegations and defenses. Petitioner's contention that respondent failed to adduce documentary evidence to prove her claim does not thus lie.

7. ID.; CIVIL PROCEDURE; CERTIFICATION AGAINST NON-FORUM SHOPPING; AN OMISSION IN THE CERTIFICATE OF NON-FORUM SHOPPING ABOUT ANY EVENT THAT WOULD NOT CONSTITUTE *RES JUDICATA* AND *LITIS PENDENCIA* IS NOT FATAL AS TO MERIT THE DISMISSAL AND NULLIFICATION OF THE ENTIRE PROCEEDINGS.— Respecting the Fourth Shari'a Judicial District Court's challenged conclusion that respondent had substantially complied with the requirement of Section 5 of Rule 7 of the Rules of Court, the fourth paragraph of respondent's "Verification" of her petition in Civil Case No. 2005-111 which reads: xxx xxx xxx 4. That **except for the earlier petition for divorce** which was dismissed, there is no other similar case now pending with the Supreme Court, Court of Appeals or before any other court or tribunal; that **should I discover that there is such of similar nature and character, I will promptly inform** *this Honorable Court.* xxx xxx xxx bears it out. The sworn certification need not be in a separate segment. Thus, Section 5 of Rule 7 provides: SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, **or** in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading

has been filed. xxx xxx xxx As for the omission by respondent to include in the certification the dismissal of the annulment case she filed with the RTC of Muntinlupa City, it is not fatal. An omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present.

APPEARANCES OF COUNSEL

Benjamin B. Lanto for petitioner.
Hamid A. Barra for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

This is not the first time that the parties, Fouziy Ali Bondagjy (petitioner) and his wife Sabrina Artadi (respondent), resort to this Court to resolve yet another controversy between them,[1] one which calls for the resolution of a seeming procedural stalemate over the dissolution of their connubial bond.

Petitioner and respondent were married in accordance with Islamic Law on February 4, 1988 at the Manila Hotel.[2] After a few years, the marital union soured. Respondent soon filed in or about March 1996 a complaint for divorce by *faskh*[3] before the Third Shari'a Circuit Court at Isabela, Basilan[4] where it was docketed as SCC Case No. 541, alleging as ground therefor

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[1] In G.R. No. 140817, "*Bondagjy v. Bondagjy*," 423 Phil. 127 (2001), where this Court awarded the custody of then minors Abdulaziz and Amouaje Bondagjy to the mother, Sabrina Artadi-Bondagjy.

[2] *Rollo*, at 46.

[3] *Vide* photocopy of complaint, *rollo*, pp. 27-34; under Article 52 of Presidential Decree No. 1083 (1977) or the CODE OF MUSLIM PERSONAL LAWS.

[4] *Rollo* at 27-34.

petitioner's neglect or failure to provide support since October 1994.

After what the Third Shari'a Circuit Court described as a "careful evaluation of the pleadings of the parties" consisting of respondent's Petition, petitioner's Answer to Affirmative Defenses, and the Reply of petitioner, said court, by Order[5] of June 24, 1996, dismissed respondent's complaint in this wise:

> [T]he grounds relied upon by herein plaintiff in her petition for divorce against herein defendant **does [*sic*] not exist as of the moment** and not to mentioned [*sic*] the fact that herein plaintiff is not actually a resident of Zamboanga City. Nonetheless, it is very clear that herein **defendant could have not provided support and companionship** to herein plaintiff and their children. The fact that herein defendant brought his wife to Saudi Arabia wherein she operated a fashion shop with the help of herein defendant and that their children was born in Saudi Arabia is a clear manifestation that herein defendant cared for his wife and their children and could have not neglected them in Saudi Arabia in his own place and not to mentioned [*sic*] the fact that herein defendant belongs to a respectable family in Saudi Arabia and herein defendant being an arab muslim knows very well that it is a great sin not to provide support and companionship to his wife and children as head of the family.
>
> The grounds for the petition for divorce as alleged in the complaint of herein plaintiff are **mere allegations without evidences** to support them. (Emphasis and underscoring supplied)

Respondent's motion for reconsideration of the order of dismissal was denied.[6] The dismissal order became final and executory, respondent not having appealed the same.

Close to two years thereafter or on March 20, 1998, respondent filed a petition for declaration of absolute nullity of marriage, custody and support before the Regional Trial Court (RTC) of Muntinlupa City. The petition was, by Order of January 28, 1999,[7] dismissed on the grounds of lack of jurisdiction over the

[5] *Id.* at 35-37.

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

[7] *Id.* at 45.

persons of the parties, they being Muslims at the time of the marriage, and *res judicata* in view of the above-said dismissal order of the Third Shari'a Circuit Court.[8]

Six years later or on February 7, 2005, respondent filed another petition[9] for divorce by *faskh* before the Second Shari'a Circuit Court at Marawi City where it was docketed as Civil Case No. 2005-111, on the grounds of neglect and failure of petitioner to provide support and to perform his marital obligations.[10]

Petitioner raised the affirmative defenses of *res judicata*, lack of jurisdiction over the person of respondent, and forum-shopping.[11]

Finding the affirmative defenses, except lack of jurisdiction, persuasive, and after considering the respective memoranda of the parties, the Second Shari'a Circuit Court dismissed respondent's petition by Order of June 22, 2005[12] on the ground of *res judicata* and failure to comply with the rule on forum shopping.

Respondent appealed to the Fourth Shari'a Judicial District Court at Marawi City which, by the present challenged Decision of October 17, 2005, ruled that *res judicata* does not apply in the case at bar since respondent may have new evidence to prove that she is indeed entitled to divorce. Brushing aside the Second Shari'a Circuit Court's finding that respondent failed to comply with the rule on forum-shopping, the Fourth Sharia's Judicial District Court held:

x x x x x x x x x

Under oath, [petitioner] has substantially complied with Section 5, Rule 7, Rules of Court. In one case, the Supreme Court

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[8] *Ibid.*

[9] *Id.* at 46-49.

[10] *Ibid.*

[11] *Id.* at 64-73.

[12] *Id.* at 140-149.

ruled that while the required certificate of non-forum shopping is mandatory, it is not jurisdictional. (*Robern Development Corporation v. Quitain*, 315 SCRA 150)

x x x x x x x x x

(Underscoring supplied)

The Fourth Shari'a Judicial District Court accordingly overturned the dismissal order of, and remanded the case, to the Second Shari'a Circuit Court for hearing on the merits. Hence, the present petition raising the issue of

WHETHER . . . THE [FOURTH] SHARI'A DISTRICT COURT OF MARAWI CITY ERRED IN REVERSING THE FINDINGS OF THE SECOND SHARI'A CIRCUIT COURT OF MARAWI CITY THAT A) CIVIL CASE [NO.] 2005-111 IS BARRED BY PRIOR JUDGMENT [OR] *RES JUDICATA* IN CIVIL CASE [NO.] 541 WHICH WAS DECIDED WITH FINALITY ON MARCH 5, 1996 [*sic*], INVOLVING THE SAME PARTIES AND ISSUES, AND B) NON-COMPLIANCE WITH THE RULE ON CERTIFICATION AGAINST FORUM SHOPPING.

Petitioner contends that the Fourth Shari'a District Court erred in remanding the case to the Second Shari'a Circuit Court for hearing on the merits, the former not having even found in the pleadings any new evidence to support respondent's petition for divorce by *faskh.* And he asserts that, as it was respondent who refused to cohabit with him, he cannot be faulted for failing to support her and their children.[13]

Petitioner further asserts that respondent's petition filed before the Second Shari'a Circuit Court did not contain the required certification of non-forum shopping, and if there was one, it failed to disclose the priorly filed civil case for declaration of absolute nullity of marriage which was dismissed by Branch 256 of the RTC of Muntinlupa for lack of jurisdiction and *res judicata*.[14]

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[13] *Id.* at 14-16.

[14] *Id.* at 18.

The petition fails.

For *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be, as between the first and second actions, identity of parties, of subject matter, and of causes of action.[15]

The presence of the first three requisites is not disputed. The Third Shari'a Circuit Court had jurisdiction over the first complaint-SCC Case No. 541, for divorce by *faskh.* And it had rendered a decision on the merits, which decision had become final.

It is with respect to the presence of the fourth requisite — that there is identity of causes of action in SCC Case No. 541 and Civil Case No. 2005-111 — that the decision of the present petition hinges. The Court finds no such identity of causes of action.

The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action.[16] If the same evidence would sustain both actions, they are considered the same and covered by the rule that the judgment in the former is a bar to the subsequent action.

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[15] *Williams v. Court of Appeals*, G.R. No. 166177, December 18, 2006, 511 SCRA 152; *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 142439, December 6, 2006, 510 SCRA 127; *Balanay v. Paderanga*, G.R. No. 136963, August 28, 2006, 499 SCRA 670*; Heirs of Enrique Diaz v. Virata*, G.R. No. 162037, August 7, 2006, 498 SCRA 141; *Coastal Pacific Trading Inc. v. Southern Rolling Mills Co. Inc*., G.R. No. 118692, July 28, 2006, 497 SCRA 11; *Parayno v. Jovellanos,* G.R. No. 148408, July, 14, 2006, 495 SCRA 85; *Heirs of Rolando Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675; *Republic v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416; *Philippine National Oil Co. v. National College of Business and Arts*, G.R. No. 155698, January 31, 2006, 481 SCRA 298.

[16] *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83,103.

Under P.D. No. 1083 or the Code of Muslim Personal Laws, the court may decree a divorce by *faskh*, upon petition of the wife, on any of the following grounds:

(a) Neglect or failure of the husband to provide support for the family for at least six consecutive months;

(b) Conviction of the husband by final judgment sentencing him to imprisonment for at least one year;

(**c) Failure of the husband to perform for six months without reasonable cause his marital obligation in accordance with this code;**

(d) Impotency of the husband;

(e) Insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;

(f) Unusual cruelty of the husband as defined under the next succeeding article; or

(g) Any other cause recognized under Muslim law for the dissolution of marriage by *faskh* either at the instance of the wife or the proper *wali*.[17] (Emphasis and underscoring supplied)

The material allegations in respondent's petition in SCC Case No. 541 are:

x x x x x x x x x

9. As a matter of fact, it was only her income from this business in Jeddah that was used by the plaintiff to support her and family [*sic*] and sometimes even the mother of the defendant;

10. Plaintiff has begged many times the defendant to attend to his family and perform his function and role as a father and husband but was never fulfilled by the defendant;

11. **On account of the continued absences and complete disregard of the defendant of his obligation to the plaintiff and their children, plaintiff decided to come back to the Philippines**

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[17] P.D. 1083, *supra* note 3.

after six (6) years of their married life with their children sometime in October 1993 and stayed with plaintiff's mother;

x x x x x x x x x

13. On the other hand, despite the fact that defendant refused to perform a divorce by thalaq to the plaintiff, **defendant also continuously failed and refused to give financial support, companionship as well as love and affection to the plaintiff and her children even up to the present time[.]**[18]

x x x x x x x x x
(Emphasis and underscoring supplied),

The material allegations in respondent's petition in Civil Case No. 2005-111 subject of the present case are:

x x x x x x x x x

10. That while Petitioner's earlier attempts in seeking divorce failed, the Respondent harassed and coerced her by filing unfounded cases which added to the Petitioner's worries and anxieties;

11. That the Petitioner is willing to narrate before this Honorable Court the untold sufferings and pain that she had incurred during her years of marriage with the Respondent, which would justify the issuance of a Divorce by Faskh as provided for in the Code of Muslim Personal Laws;

12. That since then, the Respondent has failed and **continuously failed** to perform his legal, moral and religious obligations to support the Petitioner and her children **for a period of more than ten (10) years**;[19]

x x x x x x x x x
(Emphasis and underscoring supplied)

From the foregoing material allegations in the two petitions, the Court finds that the causes of action are based on different periods during which petitioner allegedly neglected or failed to support his family and perform his marital obligations.

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

[19] *Rollo,* p. 47.

SCC Case No. 541 which was dismissed on June 24, 1996 covered the period prior to March 1996 (the date of its filing), while Civil Case No. 2005-111 subject of the present petition which was filed on February 7, 2005 covered the period in the interim. In other words, in the first case, petitioner's alleged negligence and/or failure to support and perform his marital obligations occurred at least six months before March 1996. Whereas in the second case, similar grounds-bases of the cause of the action occurred at least six months before February 7, 2005. The causes of action in the two cases are thus independent of each other, the circumstances relating to non-support and non-performance of marital obligations being disparate.

Respondent would thus have to present evidence to support her petition in Civil Case No. 2005-111 filed on February 7, 2005 that petitioner had, after the dismissal of SCC Case No. 541 on June 24, 1996 and for at least six months prior to February 7, 2005, "continuously failed to perform his . . . obligations to support [her] and her children," independently of any evidence which may have been appreciated by the judge in SCC Case No. 541. It bears emphasis at this juncture that the Third Shari'a Circuit Court, in dismissing SCC Case No. 541, merely evaluated "the pleadings submitted by the parties," following which it concluded that "the grounds relied upon by herein [respondent]" . . . does [*sic*] not exist as of the moment and not to mentioned [*sic*] the fact that [she] is not actually a resident of Zamboanga City." (Underscoring supplied). In so doing, the said court applied the third paragraph of Section 6 of the Special Rules of Procedure in Shari'a Courts[20] reading:

SEC. 6. PRE-TRIAL. (1) x x x.

x x x x x x x x x

(3) SHOULD THE COURT FIND, UPON CONSIDERATION OF THE **PLEADINGS**, EVIDENCE AND MEMORANDA, THAT **A JUDGMENT MAY BE RENDERED WITHOUT NEED OF A**

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[20] Promulgated by the Supreme Court on September 20, 1983.

FORMAL HEARING, THE COURT MAY DO SO WITHIN FIFTEEN (15) DAYS FROM THE SUBMISSION OF THE CASE FOR DECISION.

x x x x x x x x x

(Emphasis and underscoring supplied)

To reiterate, the Third Shari'a Circuit Court decided SCC Case No. 541 merely on the basis of the pleadings of the parties.

In a similar vein, the Second Shari'a Circuit Court denied respondent's petition in Civil Case No. 2005-111 only after conducting a hearing of the affirmative defenses and a consideration of the memoranda submitted by the parties in connection therewith. In other words, the two courts did not conduct a formal hearing of respondent's petitions.

The findings of the Second Shari'a Circuit Court were at best superficial, however, given the distinctiveness of Shari'a Court procedures. Thus, under Muslim Procedural Law, the Shari'a court is mandated to adhere to sources of Muslim Law relating to the number, status or quality of witnesses, and evidence required to prove any fact, and to apply the Rules of Court only suppletorily.[21]

By and large, jurisprudence on Muslim Law recognizes three kinds of evidence: first, *shahadah* or testimonial evidence; second, *igrar* or admission; and third, *yamin* or oath.[22] Documentary evidence is considered outside the mode of proofs (*i.e.*, testimony, admission and oath), but at times accepted as substitute for oral testimony.[23]

Muslim Law thus places a premium on testimonial evidence as mode of proof. This unique legal precept *a fortiori* applies

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[21] *Id.* at Sec. 16.

[22] Arabani Sr., *PHILIPPINE SHARI'A COURTS PROCEDURE* (2000), p. 582.

[23] *Ibid.* citing Abdur Rahim, Muh. *Jurisprudence*, p. 382; cit. Fahtawa Alamgirriyah, Vol. III, p. 5341, Mejelle, p. 297.

in the case at bar. For neglect or failure to provide support and to perform one's marital obligations requires proof by substantial evidence, not by inference as what the judge of the Third Shari'a Circuit Court did as reflected in the earlier-quoted portions of his June 24, 1996 Order. Not infrequently, the testimonies and contra-declarations of the parties, the children or their witnesses are secured to prove their respective allegations and defenses.

Petitioner's contention that respondent failed to adduce documentary evidence to prove her claim does not thus lie.

Respecting the Fourth Shari'a Judicial District Court's challenged conclusion that respondent had substantially complied with the requirement of Section 5 of Rule 7 of the Rules of Court, the fourth paragraph of respondent's "Verification" of her petition in Civil Case No. 2005-111 which reads:

x x x x x x x x x

4. That **except for the earlier petition for divorce** which was dismissed, there is no other similar case now pending with the Supreme Court, Court of Appeals or before any other court or tribunal; that **should I discover that there is such of similar nature and character, I will promptly inform** this Honorable Court.[24]

x x x x x x x x x

(Emphasis and underscoring supplied),

bears it out. The sworn certification need not be in a separate segment. Thus, Section 5 of Rule 7 provides:

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

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[24] *Rollo*, p. 49.

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.

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

As for the omission by respondent to include in the certification the dismissal of the annulment case she filed with the RTC of Muntinlupa City, it is not fatal. An omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present.[25]

As priorly discussed, the order dismissing SCC Case No. 541 does not constitute *res judicata* on Civil Case No. 2005-111 subject of the present case. Nor does the order dismissing Civil Case No. 98-070, an action for declaration of absolute nullity of marriage under Article 36 of the Family Code. For the grounds for nullity of marriage under the Family Code are dissimilar to the grounds for divorce by *faskh* under the Code of Muslim Personal Laws. Besides, Civil Case No. 98-070 was, in the main, dismissed by the RTC of Muntinlupa for lack of jurisdiction over the person of petitioner and of respondent.

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED*. The October 17, 2005 Decision of the Fourth Shari'a Judicial District Court at Marawi City is *AFFIRMED*.

Let the records of the case be *REMANDED* to the court of origin, the Second Shari'a Circuit Court at Marawi City, which is ordered to reinstate Civil Case No. 2005-111 in its docket and to conduct further proceedings thereon with dispatch.

Costs against petitioner.

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[25] *Roxas v. Court of Appeals*, 415 Phil 430, 445 (2001).

SO ORDERED.

Quisumbing, Corona,[****] *Velasco, Jr.,* and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171469. August 11, 2008]

V.C. PONCE COMPANY, INC., *petitioner, vs.* **RODOLFO REYES, JOSE MONASTERIAL, JR., BENJAMIN PENARANDA, JOSE SAMBO, TEOFILO VIRAY, ANTONIO ALFONSO, CEFERINO ARICHEA, DAVID BAQUIRIN, JUANITO BEO, ADMIRADO COMERTA, ALBERTO CORVERA, ROMEO MAPILE, CRESANCIO MARQUEZ, JR., ALEJANDRO ASANGA, ROSAURO UMALI, CONRADO VILLAFRANCA (N. LACAMBRA) and HONESTO VITUG,** *respondents.*[*]

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ESSENTIAL PARTS OF A DECISION OR FINAL ORDER; ENUMERATION. —** In general, the essential parts of a decision or order consist of the following: (1) a statement of the case; (2) a statement of the facts; (3) the issues or assignment of errors; (4) the court ruling; and (5) the dispositive portion. In a civil case such as this, the dispositive portion should state whether the complaint or petition is granted or denied, the

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[****] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

[*] Judge Lilia C. Lopez of the Regional Trial Court of Pasay City, Branch 109, was originally impleaded as a respondent but the Court excluded her pursuant to Section 4, Rule 45 of the Rules of Court.

specific relief granted and the costs. The order of execution must substantially conform to the dispositive portion of the decision sought to be executed. In the event of variance, the dispositive portion of the final and executory decision prevails.

2. **ID.; ID.; ID.; DISPOSITIVE PORTION PREVAILS OVER THE DISCUSSION OR THE BODY OF THE SAID DECISION OR ORDER; EXEMPLIFIED. —** It is a cardinal rule that the dispositive portion of an order or judgment prevails over the discussion or the body of the said decision or order. In this case, the dispositive portion of the January 23, 2003 order merely reiterated the directive for the issuance of individual titles to respondents by the Registrar of Deeds. Nevertheless, even if we analyze and compare the body of the January 23, 2003 order and that of the December 6, 1989 decision, no substantial variance exists between them. On its face, the January 23, 2003 order is in harmony with the dispositive portion of the December 6, 1989 decision. The Registrar of Deeds of Parañaque City is being directed to issue individual titles to respondents to *complete the satisfaction of judgment/decision of th[e] [c]ourt partially executed*. Reference to the "partially executed decision" simply stresses that the execution must conform to the December 6, 1989 decision.

3. **ID.; ID.; ID.; EXECUTION; MINISTERIAL DUTY OF THE COURT TO ORDER EXECUTION OF FINAL ORDER, SUSTAINED. —** It is the ministerial duty of the court to order the execution of its final judgment. It has the inherent power to control, in furtherance of justice, the conduct of its ministerial offices, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto. Section 10, Rule 39 of the Rules of Court and Section 107 of PD 1529 provide the procedure to be followed in case of a refusal by the owner to surrender the duplicate copy of his TCT. A considerable length of time has passed. It is time to end this litigation and write *finis* to this case.

4. **LEGAL ETHICS; ATTORNEYS; DUTY TO UPHOLD THE CAUSE OF JUSTICE IS SUPERIOR TO THE DUTY TO CLIENT; UPHELD.—** We remind petitioner's counsel, Atty. Candice Marie T. Bandong, that she is an officer of the court who must see to it that the orderly administration of justice must never be unduly impeded, not even by her client. Her

oath to uphold the cause of justice is superior to her duty to her client; its primacy is indisputable. In this light, we are sternly warning her (or any other counsel who might take over this case) of disciplinary action for any further delay in the execution of the decision of the Pasay City RTC.

APPEARANCES OF COUNSEL

Danilo L. Patron and Associates and *Candice Marie T. Bandong* for petitioner.

Parulan Soncuya Rama and Trinidad Law Offices for respondents.

D E C I S I O N

CORONA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner V.C. Ponce Company, Inc. assails the October 27, 2005 decision[1] and February 3, 2006 resolution[2] of the Court of Appeals (CA) affirming the cancellation of Transfer Certificate of Title (TCT) No. 97084 and the issuance of individual titles in favor of respondents by the Regional Trial Court (RTC) of Pasay City, Branch 109.

This case traces its history to a complaint filed by Eusebia de Leon *vda. de* Rodriquez against petitioner in the then Court of First Instance of Pasay City on January 3, 1963 docketed as Civil Case No. 455-R. It sought the annulment of the sale of a parcel of land covered by TCT No. 97084 she had previously sold to petitioner. The subject property was already subdivided into smaller lots for which individual TCTs were issued in petitioner's name.

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[1] Penned by Associate Justice Josefina Guevarra-Salonga and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Fernanda Lampas-Peralta of the Third Division of the CA. *Rollo*, pp. 44-52.

[2] *Rollo*, pp. 54-55.

On October 22, 1971, respondents filed a complaint-in-intervention in Civil Case No. 455-R. Respondents executed contracts to sell with petitioner over individual lots comprising the area covered by TCT No. 97084 prior to the institution of the case. Their complaint-in-intervention was allowed.

On July 17, 1989, Corazon Rodriguez (as administratrix of the estate of de Leon) and petitioner entered into a compromise agreement. Petitioner paid Rodriguez ₱3,500,000 in exchange for the release of the *lis pendens* annotation on the individual titles of the properties involved in Civil Case No. 455-R, and the dismissal of the case without costs. The court approved the compromise agreement, thereby terminating the case between petitioner and Rodriguez.

Respondents, however, refused to compromise and the complaint-in-intervention was tried on the merits. In a decision[3] dated December 6, 1989, the Pasay City RTC ruled in favor of respondents. The dispositive portion of the decision read:

WHEREFORE, the Omnibus Motion to Dismiss is hereby denied and accordingly, judgment is hereby rendered in favor of the intervenors herein and against defendant V.C. Ponce & Co., Inc. The Court hereby orders and declares:

1. The individual Contracts to Sell entered into between the intervenors and the defendant are hereby declared valid, subsisting and binding on both parties, particularly the defendant V.C. Ponce & Co., Inc. and the latter is hereby enjoined to abide by the terms and conditions thereof subject to the modifications as [hereinafter] provided and under the same price originally stated therein;

2. The individual intervenors are hereby ordered to pay defendant V.C. Ponce & Co., Inc. the balance of the purchase price within a period of twelve (12) months from finality of this decision to be paid in twelve (12) equal monthly amortizations;

3. The defendant V.C Ponce & Co., Inc. is hereby given one (1) year from finality of this decision within which to

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[3] Penned by Judge Lilia C. Lopez. *Rollo*, pp. 105-123.

complete the construction of the enumerated items in paragraph 5 of the Contracts to Sell;

4. Defendant V.C. Ponce & Co., Inc. is ordered to deliver clean titles to the individual intervenors upon full payment of the purchase price;

5. x x x

SO ORDERED.

The Pasay City RTC's December 6, 1989 decision was appealed by petitioner and it eventually reached the Supreme Court. In a resolution dated October 21, 1991, respondents' claims were affirmed when we ruled in their favor.[4] Entry of judgment was made on December 9, 1991.

It was at this point that respondents commenced the tedious process of trying to execute the Pasay City RTC's December 6, 1989 decision.

On October 2, 1992, the Pasay City RTC issued a writ of execution. Respondents consigned to the court their payments to petitioner under their respective contracts to sell, pursuant to the December 6, 1989 decision. But in view of petitioner's obstinate refusal to comply with the October 2, 1992 writ of execution, the RTC again directed petitioner to deliver clean titles to respondents after payment and consignation.[5] Petitioner was likewise ordered to strictly obey the terms and conditions of the December 6, 1989 decision with a stern warning that repeated non-compliance would be dealt with severely. The RTC also ordered its clerk of court to receive respondents' cash payments.

On August 5, 1993, the clerk of court was ordered to receive from respondents' counsel their cash payments to petitioner and deposit them in the Philippine National Bank. Petitioner was (again) ordered to comply with the December 6, 1989 decision within ten days from receipt of the order.

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[4] *Rollo*, pp. 181-186.

[5] In an order dated March 8, 1993. *Rollo*, pp. 204-205.

Petitioner (once more) sought a deferment of the enforcement of the March 8, 1993 and August 5, 1993 orders but the same was denied. In an order dated August 3, 1994, the Pasay City RTC cited petitioner in contempt for its refusal to abide by the March 8, 1993 order. The Registrar of Deeds of Parañaque was likewise directed to cancel petitioner's TCTs over the properties which were already paid in full and to issue new titles in favor of respondents.

Because of petitioner's continued inaction, an *alias* writ of execution dated August 7, 1995 was issued by the Pasay City RTC to enforce the December 6, 1989 decision.

Respondents then filed an *ex-parte* motion for entry of judgment, praying that the Registrar of Deeds of Parañaque be directed to divest petitioner of its titles and to issue new ones to them. The court ordered its clerk of court and *ex-officio* sheriff to execute deeds of conveyance in favor of respondents. The Registrar of Deeds of Parañaque, however, refused to register respondents' deeds of conveyance because petitioner adamantly refused to surrender its owner's duplicate TCTs. So, on January 11, 2002, the Pasay City RTC ordered the Registrar of Deeds of Parañaque to cancel petitioner's duplicate TCTs. Petitioner sought a reconsideration but the same was denied in an order dated September 13, 2002.

Respondents filed a manifestation and motion seeking a court order annulling the titles of petitioner over the properties involved in the case. In response, the Pasay City RTC issued the assailed order dated January 23, 2003 nullifying and canceling this time TCT No. 97084 (the mother title) and mandating the issuance of individual titles to respondents. Petitioner's motion for reconsideration was likewise denied.

Petitioner questioned the January 23, 2003 order (and that denying the motion for reconsideration) in the CA via a petition for *certiorari*. In denying relief to petitioner, the CA held that the cancellation of TCT No. 97084 (the mother title) was necessary to the execution of the trial court's decision, considering the refusal of the Registrar of Deeds to register the deeds of sale and issue clean individual titles to respondents.

Hence, this petition.

Petitioner claims that the January 23, 2003 order for the nullification and cancellation of TCT No. 97084 completely changed the tenor of the December 6, 1989 decision.

We deny the petition.

In general, the essential parts of a decision or order consist of the following: (1) a statement of the case; (2) a statement of the facts; (3) the issues or assignment of errors; (4) the court ruling; and (5) the dispositive portion.[6] In a civil case such as this, the dispositive portion should state whether the complaint or petition is granted or denied, the specific relief granted and the costs.[7]

The order of execution must substantially conform to the dispositive portion of the decision sought to be executed.[8] In the event of variance, the dispositive portion of the final and executory decision prevails.

The dispositive portion of the December 6, 1989 decision read in part:

> WHEREFORE, the Omnibus Motion to Dismiss is hereby denied and accordingly, judgment is hereby rendered in favor of the intervenors herein and against defendant V.C. Ponce & Co.[,] Inc. The Court hereby orders and declares:
>
> 1. x x x x x x x x x
> 2. The individual intervenors are hereby ordered to pay defendant V.C. Ponce & Co.[,] Ince. the balance of the purchase price within a period of twelve (12) equal monthly amortizations;
> 3. x x x x x x x x x
> 4. Defendant V.C. Ponce & Co.[,] Inc. is ordered to deliver clean titles to the individual intervenors upon full payment of the purchase price; x x x

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[6] *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283, 309.

[7] *Id.* at 313.

[8] *Lao v. King,* G.R. No. 160358, August 31, 2006, 500 SCRA 599, 605.

while the order dated January 23, 2003 stated in part:

> [C]onsidering the affirmance of the decision of this Court dated December 6, 1989 by both the Court of Appeals and the Supreme Court, for full satisfaction of the decision, Transfer Certificate of Title (TCT) No. 97084, Register of Deeds, Rizal, the original of which is presently on file with the Register of Deeds of Parañaque City, is hereby NULLIFIED and CANCELLED and considered of no value and effect conformably with Section 107 of PD 1529 x x x
>
> In view of the foregoing, the Register of Deeds of Parañaque City is hereby directed to issue individual titles to the Intervenors to complete the satisfaction of judgment/decision of this Court already partially executed.
>
> The Intervenors are directed to coordinate with the Register of Deeds of Parañaque City to further hasten the issuance of their individual titles.
>
> SO ORDERED.

The variance claimed by petitioner allegedly lies in the directive to the Register of Deeds of Parañaque City to nullify and cancel TCT No. 97084. Petitioner insists that there was no such order in the dispositive portion of the December 6, 1989 decision.

Petitioner is wrong.

It is a cardinal rule that the dispositive portion of an order or judgment prevails over the discussion or the body of the said decision or order. In this case, the dispositive portion of the January 23, 2003 order merely reiterated the directive for the issuance of individual titles to respondents by the Registrar of Deeds.

Nevertheless, even if we analyze and compare the body of the January 23, 2003 order and that of the December 6, 1989 decision, no substantial variance exists between them. On its face, the January 23, 2003 order is in harmony with the dispositive portion of the December 6, 1989 decision. The Registrar of Deeds of Parañaque City is being directed to issue individual titles to respondents to *complete the satisfaction of judgment/ decision of th[e] [c]ourt partially executed*. Reference to the

"partially executed decision" simply stresses that the execution must conform to the December 6, 1989 decision.

Petitioner admits that TCT No. 97084 is the mother title of the individual titles of respondents.[9] However, it claims *for the first time* that TCT No. 97084 was the subject of another case and that it was already cancelled by virtue of another court order or judgment.[10] Furthermore, TCT No. 97084 allegedly subsists only with respect to areas which are not involved in this case.

Petitioner's claims are not only immaterial and undeserving of favorable consideration; they were also never established with evidence of such alleged court order or judgment. Thus, there is no way by which these allegations can be verified. Given petitioner's propensity to manipulate legal procedures to defeat the just claims against it, such lapse is fatal to its cause.

The Pasay City RTC was well within its powers when it issued the January 23, 2003 order. It is the ministerial duty of the court to order the execution of its final judgment. It has the inherent power to control, in furtherance of justice, the conduct of its ministerial offices, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto.[11]

Section 10, Rule 39 of the Rules of Court[12] and Section 107

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[9] *Rollo*, p. 422.

[10] *Rollo,* pp. 444-448. Petitioner quotes in part a **supposed** decision showing the current status of TCT No. 97084.

[11] *Mejia v.* Gabayan, G.R. No. 149765, 12 April 2005, 455 SCRA 499, 512-513.

[12] Section 10, Rule 39 of the Rules of Court provides:

"SEC. 10. *Execution of judgments of specific act.* —

> (a) *Conveyance, delivery of deeds, or other specific acts; vesting title.* — If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and **the party fails to comply within the time specified, the court may direct**

of PD 1529[13] provide the procedure to be followed in case of a refusal by the owner to surrender the duplicate copy of his TCT.

A considerable length of time has passed. It is time to end this litigation and write *finis* to this case. Enough is enough.

We remind petitioner's counsel, Atty. Candice Marie T. Bandong, that she is an officer of the court who must see to it that the orderly administration of justice must never be unduly impeded, not even by her client. Her oath to uphold the cause of justice is superior to her duty to her client; its primacy is indisputable.[14] In this light, we are sternly warning her (or any

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the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law." (emphasis supplied)

[13] Section 107 of PD 1529, otherwise known as the Property Registration Decree, provides:

"SEC. 107. *Surrender of withheld duplicate certificates.* —Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. **If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same was well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate." (emphasis supplied)**

[14] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 381.

other counsel who might take over this case) of disciplinary action for any further delay in the execution of the decision of the Pasay City RTC.

That TCT No. 97084 has been subdivided into smaller lots and that derivative titles have been issued therefor are of no moment. The fact remains that, for more than 15 years, petitioner has been consistently refusing to surrender its owner's duplicate originals of the derivative TCTs, contrary to lawful orders and in evident bad faith. We are therefore ordering the cancellation and nullification of TCT No. 97084 and its derivative titles. Let new certificates of title be issued (a) in the name of the individual respondents for the lots covered by their respective fully-paid contracts to sell and (b) in the name of petitioner for those portions not covered by the claims of respondents.

WHEREFORE, the petition is hereby *DENIED*. The October 27, 2005 decision and February 3, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 77783 are hereby *AFFIRMED with MODIFICATION*.

The Registrar of Deeds of Parañaque City is ordered to cancel TCT No. 97084 and the derivative titles of the lots covered by respondents' respective contracts to sell (with petitioner) and issue clean individual titles to them.

Treble costs against petitioner.

SO ORDERED.

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

[**] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

SECOND DIVISION

[G.R. No. 172696. August 11, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENITO BALLESTEROS *y* GRAGASIN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED. —** In convicting the appellant of murder, the trial court appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make.
2. **ID.; ID.; ID.; ID.; ELEMENTS. —** To prove this qualifying circumstance, the following must be shown: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, thereby depriving the latter of any real opportunity for self-defense and ensuring the commission of the crime without risk to the aggressor. The evidence reveals that the attack on the victim came at an unguarded moment when he was most vulnerable. He was holding his cards, close to his face, thereby leaving his stomach area fully unprotected. He was moreover fully absorbed in the card game and was not in the position to defend himself. That the attack came **suddenly** and **unexpectedly** can be read from the failure of Ernesto — one of the card players — to see the actual stabbing thrust. While the stab wound was at the stomach area, it was established that the appellant came from behind and stabbed the unsuspecting Reyes at the right side of his stomach that was fully exposed because of the way he was holding his cards.
3. **ID.; ID.; PENALTY. —** The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as

amended by Republic Act No. 7659) with *reclusion perpetua* to death. x x x In the absence of mitigating and aggravating circumstances in the commission of the felony, the court *a quo* correctly sentenced the appellant to *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code.

4. **ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS. —** While evident premeditation was alleged in the Information, the court *a quo* correctly concluded that this circumstance was not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. The "time" requirement is critical in evident premeditation as it indicates the "premeditation" aspect — the opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what the accused planned to do. In the stabbing of Reyes, the flow of events showed that this element was not present.

5. **ID.; CIVIL LIABILITY; TEMPERATE DAMAGES; WHEN AWARD THEREOF PROPER. —** To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. However, considering that the proven amount is less than ₱25,000.00, we opt to award temperate damages in the amount of ₱25,000.00 in lieu of actual damages pursuant to our ruling in *People v. Villanueva.* There, we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified, in lieu of actual damages of a lesser amount.

6. **ID.; ID.; MORAL DAMAGES; MANDATORY IN CASES OF MURDER AND HOMICIDE. —** Moral damages are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. In accordance with prevailing rules, we increase the amount to ₱50,000.00. The heirs of the victim are likewise entitled to exemplary

damages since the qualifying circumstance of treachery was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. We increase this amount from ₱10,000.00 to ₱25,000.00 to conform with recent jurisprudence.

7. **ID.; ID.; CLAIM FOR DAMAGES FOR LOSS OF EARNING CAPACITY; DOCUMENTARY EVIDENCE SHOULD BE PRESENTED. —** We cannot award loss of earning capacity to the victim's heirs because no documentary evidence was presented to substantiate this claim. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. While there are exceptions to the rule, these exceptions do not apply as the victim, Reyes, was a *barangay* captain when he died; he was not a worker earning less than the current minimum wage under current labor laws.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

We review in this appeal the decision[1] and resolution[2] of the Court of Appeals (*CA*) dated July 26, 2005 and September 26, 2005, respectively, in CA-G.R. CR No. 00460. The challenged decision affirmed the decision[3] of the Regional Trial Court (RTC), Branch 27, Bayombong, Nueva Vizcaya convicting the appellant Benito Ballesteros (*appellant*) of the crime of murder and meting

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[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justice Salvador J. Valdez, Jr. and Associate Justice Mariano C. del Castillo; *rollo*, pp. 3-11.

[2] CA *rollo*, pp. 142-143.

[3] Penned by Judge Jose B. Rosales, *id.*, pp. 42-46.

him the penalty of *reclusion perpetua*. The assailed resolution, on the other hand, denied the appellant's motion for reconsideration.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of murder under an Information that states:

x x x x x x x x x

That on December 19, 1998 in the evening, in Poblacion, Municipality of Diadi, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, armed with a knife, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously stab one REYNALDO REYES, thus inflicting upon the latter mortal wound which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[4]

On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Ernesto Valencia; Normita Reyes; and Dr. Telesforo Ragpa. The appellant and Rodolfo Castro took the witness stand for the defense.

Ernesto Valencia (*Ernesto*) testified that between 11:00 o'clock in the evening and 12:00 o'clock midnight of December 19, 1998, he was playing a local card game known as "*tong-its*" with *Barangay* Captain Reynaldo Reyes (*Reyes*) and Odion Cabezon at the wake of the mother of Norma Miguel, town mayor of Diadi, Nueva Ecija.[5] In the course of the game and while Reyes was looking at his cards, holding them close to his face, the appellant suddenly approached the victim and stabbed him in the stomach.[6] Due to the force of the blow, Reyes was

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[4] CA *rollo*, pp. 4-5.

[5] TSN, September 15, 1999, pp. 3-4.

[6] *Id.*, pp. 5-6.

pushed backwards,[7] dropping his playing cards and eyeglasses.[8] Blood spurted as the appellant pulled out the knife from Reyes' body. Although shocked, Ernesto told Reyes, "*adda tamam capitan*" (You are hit).[9] Reyes covered the injured part of his stomach with his hand, grabbed his "*batuta*,"[10] and chased the appellant towards the back of the house.[11] The appellant was, however, accosted by the people around and brought to the Municipal Hall of Diadi, Nueva Vizcaya where he was detained.[12]

Reyes was rushed to the Habonillos Clinic in Cordon, Isabela where he later died.

Dr. Telesforo A. Ragpa (*Dr. Ragpa*), the Municipal Health Officer of Diadi, Nueva Vizcaya, narrated that on December 20, 1998, he conducted an autopsy on the body of Reynaldo Reyes at the request of the victim's relatives.[13] According to him, Reyes sustained only one (1) stab wound located below the 10th rib along the right clavicular line.[14] The wound penetrated the diaphragm and the liver.[15] Dr. Ragpa further testified that Reyes' cause of death was hypovolemic shock due to a wound penetrating the liver secondary to a stab wound at the abdomen.[16]

Normita Reyes (*Normita*), the victim's wife, declared on the witness stand that her husband was 52 years old[17] and a *barangay* captain when he died.[18] Her husband also drove a jeepney three

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[7] TSN, October 19, 1999, p. 8.

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

[9] TSN, October 5, 1999, p. 3.

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

[11] TSN, October 21, 1999, p. 4.

[12] Pre-Trial Order.

[13] TSN, October 26, 1999, p. 3.

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

[15] *Id.*, p. 10.

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

[17] TSN, February 1, 2000, p. 15.

[18] *Id.*, pp. 11-12.

(3) weeks a month, earning ₱100.00 to ₱150.00 a day.[19] According to her, she incurred total expenses of ₱66,090.50 due to her husband's death.[20]

The appellant gave a different version of the events, summarized in the RTC decision as follows:

> He asseverated that on that fateful night of December 19, 1998, he was asked to help in the preparation of food. He helped slice meat.[21] It was while doing this chore when Barangay Captain Reynaldo Reyes arrived. Without any provocation the said official started to hurl invectives at him, such as "*tarantado ka, bastos ka*" which embarrassed him[22] as there were about 14 persons helping in the cooking chores.[23] Being ashamed [sic], he left the table[24] where he was slicing meat after he handed the knife which he was using to Idong Miguel who was also helping in the food preparation.[25] He went to a table where card game known as "*tong-it*" was going on. The Barangay Captain followed but went to another table where he sat down to play with other persons. Reyes then called him and he thought that he wanted to play cards with him.[26] At this time, a certain Andy Ortiz called him saying "Come I will tell you something."[27] When he turned his head in the direction of Ortiz, Reyes said, "*Bastos ka*. *Tarantado*. You are turning your back at me."[28] He turned his head towards Reyes and that was when Barangay Captain Reyes hit him with a "*batuta*" on his forehead, injuring it. He grappled with the victim when the latter again tried to hit him. When they were fighting for possession of the "*batuta,*" somebody elbowed him when

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[19] TSN, February 8, 2000, pp. 7-8.

[20] TSN, February 2, 2000, pp. 3-5; TSN, February 8, 2000, pp. 2-5.

[21] TSN, February 29, 2000, pp. 4-5.

[22] *Id.*, pp. 6-7.

[23] TSN, March 7, 2000, p. 5.

[24] *Id.*, p. 6.

[25] TSN, March 14, 2000, p. 6.

[26] TSN, February 29, 2000, p. 7.

[27] TSN, March 7, p. 8.

[28] TSN, March 8, 2000, p. 8.

they tried to separate them.[29] Nothing further happened after that. [*Footnotes referring to the pertinent parts of the record supplied*]

Rodolfo Castro (*Castro*) testified that he was at the house of Mayor Norma Miguel on December 19, 1998 to help in the cooking and butchering of pigs.[30] At around 11:00 o'clock in the evening, Reyes arrived and scolded the appellant, uttering the words "*gago*" and "*ukkinam.*"[31] Thereafter, the appellant proceeded to the garage where people were playing cards. Reyes followed the appellant to the garage. Castro recalled that when the appellant was with him mixing food, he (the appellant) was not holding any knife but only a ladle.[32]

A few minutes later, he heard a scream. He went to the garage and saw Reyes hit the appellant in the forehead with a truncheon.[33] Thereafter, Reyes went towards the direction of the crowd.[34]

The RTC's decision of May 27, 2002 convicted the appellant of the crime of murder; sentenced him to suffer the penalty of *reclusion perpetua* (20 years and 1 day, to 40 years); and ordered him to pay the victim's heirs the sum of ₱66,090.50 as actual damages, ₱50,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱10,000.00 as exemplary damages, and the costs of the suit.[35]

The appellant directly appealed his conviction to this Court in view of the penalty of *reclusion perpetua* that the RTC imposed. We referred the case to the Court of Appeals for intermediate review pursuant to our ruling in *People v. Efren Mateo y Garcia*.[36]

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[29] TSN, February 29, 2000, p. 10.

[30] TSN, February 21, 2002, pp. 3-4.

[31] *Id.*, pp. 8-9.

[32] *Id.*, pp. 13-14.

[33] *Id.*, pp. 16-17.

[34] TSN, February 27, 2002, p. 3.

[35] CA *rollo*, p. 27.

[36] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

The CA affirmed the RTC decision *in toto* in a decision dated July 26, 2005. The appellant moved for a reconsideration of the decision but the CA denied his motion in a resolution dated September 26, 2005.

In his brief,[37] **the appellant imputes to the RTC the following errors:**

1. The RTC erred in finding the appellant guilty beyond reasonable doubt of the crime of murder;

2. The RTC erred in giving full faith and credence to the testimony of the prosecution witness and not giving weight to the testimony of the defense witness; and

3. Assuming arguendo that the appellant stabbed the victim, the RTC erred in convicting him of murder instead of homicide.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal and to modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA.[38] Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless carefully scrutinized the records of this case as the penalty of *reclusion perpetua* that the lower courts imposed on the accused demands no less than this kind of scrutiny.

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[37] *Supra* note 35, pp. 69-83.

[38] *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

A distinguishing feature of this present case is the presence of a witness — Ernesto Valencia — who provided positive identification of the accused in his October 5, 1999 testimony. To directly quote from the records:

PROSECUTOR CASTILLO:

Q: This person who **stabbed** him, were you able to see and recognize him during that time?

ERNESTO VALENCIA:

A: Yes, sir.

Q: If you will see him will you recognize him?

A: Yes, sir.

Q: Please look around the courtroom and point to him

A: He is here, sir.

Q: Where is he? Go down from that chair and approach the person and tap on [sic] the shoulder.

A: **(Witness went down from the witness stand, went near a person and tapped his shoulder and when asked to give his name gave his name as Benito Ballesteros)**[39] [Emphasis ours]

At the continuation of the hearing on October 7, 1999, Ernesto further elaborated on what he saw of the incident that left Reynaldo mortally wounded. He said:

PROSECUTOR CASTILLO:

Q: What about the blade, were you able to see the blade?

ERNESTO VALENCIA:

A: I saw the blade when the accused already pulled it out, sir.

Q; From what was that pulled out?

A: From the body where it was stabbed, sir.

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[39] TSN, October 5, 1999, p. 5.

Q: Whose body?

A: From the body of Brgy. Captain Reyes, sir.

Q: And where were you at that time the knife was being drawn from the body of the victim?

A: I was just sitting, sir.

Q: Who actually drew the knife from the body of the late Brgy. Captain Reyes?

A: **Ballesteros, sir.**[40] [Emphasis ours]

Ernesto clearly implied in this testimony that he did not see the actual stabbing as the thrust went in, but *categorically claimed that he did see the knife when it was already in Reyes' body*. The holder of the knife was Ballesteros, the accused. On cross-examination, Ernesto actually confirmed that he did not see the precise moment the appellant drove the knife into Reyes.

The appellant seizes this gap in Ernesto's testimony as opening to argue that his guilt was not proven beyond reasonable doubt; Ernesto did not see him actually stab Reyes.

Significantly, the trial proper was not the only source of evidence available in the case. Stipulations and admissions were made at the pre-trial conference that filled in the gaps of what were not expressly brought up at the trial. These admissions are conclusively established facts that are not for us to evaluate and reject as we see fit; they are the evidence that the parties themselves admit and confirm.

At the pre-trial, the following stipulations were agreed upon:

1. The injury which led to the death of the victim was inflicted at the house of Mayor Norma Miguel;
2. During the infliction of the injury on the victim, there was a wake relative to the mother of Mayor Norma Miguel;
3. The coffin of the dead mother of Mayor Norma Miguel was in the second floor of the house;

[40] TSN, October 7, 1999, pp. 5-6.

4. At the time of the infliction of the injury, the accused was in the vicinity of the house of Mayor Norma Miguel;
5. Immediately before the infliction of the injury, the accused was in the ground floor of the house of Mayor Norma Miguel;
6. During the infliction of the injury, the accused was in possession of a bladed weapon;
7. After the infliction of the injury, a knife was recovered from the accused;
8. Immediately after the victim was stabbed, the accused was held by the people in the place of the incident;
9. Immediately after the accused was held, he was detained in the municipal hall; and
10. The victim was rushed to the Habonillos Clinic at Cordon, Isabela.

In his defense, the appellant denies that he stabbed the victim. He claims that Reyes, after hurling invectives at him, hit him on the forehead with a truncheon, causing him to bleed profusely. When Reyes tried to attack him again, he parried the blow and the two of them grappled for the possession of the Reyes' truncheon. After they were separated, he saw blood coming from the breast of Reyes. By clear implication from all these, the appellant says that while he was at the scene and did indeed grapple with Reyes, someone else stabbed the latter.

The appellant's witness, Rodolfo Castro, supports much of what the appellant claims with respect to his activities prior to the actual stabbing, particularly the fact that the victim called the appellant *"gago"* and *"ukkinam."* Castro, however, did not say anything categorical about the *actual* stabbing. To be exact, he stated that a moment after the appellant went to the garage (where the card games were being played), he heard a shout and a hitting sound. When he looked towards the place, he saw the *Barangay* Captain hit Ballesteros at his forehead with his "*batuta*." After which, the appellant leaned on the wall facing it, with one hand and the other hand holding his

forehead. The people who were there stood up and there were confused movements in the place. He saw the Barangay Captain go to the crowd after hitting the appellant. He did not know what happened next. He only knew that the police arrested the appellant for reasons unknown to him. He overheard that the *Barangay* Captain was stabbed and was brought to the hospital.[41] That the appellant indeed suffered an injury was confirmed by Dr. Telesporo Ragpa who, testifying for the defense, stated that the accused sustained a superficial wound, ruptured and located at the mid-frontal area of the head.[42]

Based on these adduced and admitted evidence, we see that the only gap or missing link in the chain of events was the actual act of stabbing. For clarity, we recapitulate below the significant aspects of these events.

The appellant admitted during the pre-trial conference that he was in possession of a bladed weapon during the stabbing incident. By his own testimony, the appellant was in the immediate vicinity of where Reyes and his companions were playing a card game. Ernesto testified that Reyes was intent on his game closely holding his cards when he was stabbed but he (Ernesto) did not see the actual act of stabbing. What he saw was the appellant holding the knife imbedded in Reyes' body. In fact, Ernesto witnessed the appellant pull out the knife from the victim's body. Informed by Ernesto that he had been stabbed, Reyes clutched his wound with his hand, drew his *batuta* and went after the appellant who ran towards the back of the house. People within the vicinity accosted the appellant and brought him to the Municipal Hall of Diadi while the victim was brought to the hospital.

In our view, this succession of events are consistent even with the testimony of Rodolfo Castro (the lone defense witness except for the appellant himself) who significantly did not testify about the actual act of stabbing because he was not actually

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[41] TSN, Feb. 21, 2002, pp. 4-22; Feb. 26, 2002, pp. 7-9; Feb. 27, 2002, pp. 2-10.

[42] TSN, July 31, 2001, pp. 4-11.

there. He only heard a shout and a loud hitting sound, then saw Reyes hitting the appellant with his *batuta*. Thereafter, there were "confused movements" and he subsequently heard that the *barangay* captain had been stabbed. Apparently, what Castro saw was the immediate aftermath of the stabbing and the victim's immediate reaction against the appellant, as also testified to by Ernesto.

Under this critical examination and analysis, we can only conclude that no other person could have stabbed Reyes except the appellant who had the motive as he himself narrated; who was at the immediate vicinity of the incident; and who had the weapon as testified to by Ernesto and admitted at pre-trial. Ernesto's testimony clinches the case against the appellant as to his identity as knife wielder and on how he acted after plunging the knife into Reyes and thereafter. We find it very significant that the records bear no evidence showing any ill motive on the part of Ernesto that would drive him to falsely impute the fatal stabbing of Reyes to the appellant.

<u>The Crime Committed</u>

Article 248 of the Revised Penal Code defines the crime of murder as follows:

> Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery x x x

In convicting the appellant of murder, the trial court appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make.[43]

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[43] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288.

To prove this qualifying circumstance, the following must be shown: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, thereby depriving the latter of any real opportunity for self-defense and ensuring the commission of the crime without risk to the aggressor.[44]

The evidence reveals that the attack on the victim came at an unguarded moment when he was most vulnerable. He was holding his cards, close to his face, thereby leaving his stomach area fully unprotected. He was moreover fully absorbed in the card game and was not in the position to defend himself. That the attack came **suddenly** and **unexpectedly** can be read from the failure of Ernesto — one of the card players — to see the actual stabbing thrust. While the stab wound was at the stomach area, it was established that the appellant came from behind and stabbed the unsuspecting Reyes at the right side of his stomach that was fully exposed because of the way he was holding his cards.

Based on these consideirations, we find that the trial court correctly appreciated treachery as qualifying circumstance for the crime of murder.

<u>The Proper Penalty</u>

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with *reclusion perpetua* to death.

While evident premeditation was alleged in the Information, the court *a quo* correctly concluded that this circumstance was not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly

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[44] *People v. Felipe*, G.R. No. 142505, December 11, 2003, 418 SCRA 146.

indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[45]

The "time" requirement is critical in evident premeditation as it indicates the "premeditation" aspect — the opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what the accused planned to do.[46] In the stabbing of Reyes, the flow of events showed that this element was not present.

In the absence of mitigating and aggravating circumstances in the commission of the felony, the court *a quo* correctly sentenced the appellant to *reclusion perpetua*, conformably with Article 63(2)[47] of the Revised Penal Code.

Civil Liability

The RTC awarded the amount of ₱66,090.50 to the victim's heirs as actual damages. It appears that out of the said amount, only ₱16,591.00[48] were supported by receipts. The difference consists of the unreceipted amounts claimed by Reyes' heirs. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[49]

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[45] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554.

[46] *People v. dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433.

[47] ART. 63. *Rules for the application of indivisible penalties. x x x*

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[48] See Exhibit "K" and Exhibit "N", Records, pp. 92 and 95.

[49] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153.

However, considering that the proven amount is less than ₱25,000.00, we opt to award temperate damages in the amount of ₱25,000.00 in lieu of actual damages pursuant to our ruling in *People v. Villanueva.*[50] There, we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified, in lieu of actual damages of a lesser amount.

Moral damages are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. In accordance with prevailing rules, we increase the amount to ₱50,000.00.[51]

The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of treachery was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. We increase this amount from ₱10,000.00 to ₱25,000.00 to conform with recent jurisprudence.[52]

We cannot award loss of earning capacity to the victim's heirs because no documentary evidence was presented to substantiate this claim. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. While there are exceptions to the rule, these exceptions do not apply as the victim, Reyes, was a *barangay* captain when he died; he was not a worker earning less than the current minimum wage under current labor laws.

We affirm the award of ₱50,000.00 as civil indemnity pursuant to current jurisprudence.[53]

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[50] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

[51] *People v. Eling*, G.R. No. 178546, April 30, 2008.

[52] See *People v. Tolentino*, G.R. No. 176385, February 26, 2008.

[53] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008.

WHEREFORE, in light of all the foregoing, We hereby AFFIRM the July 26, 2005 decision and September 26, 2005 resolution of the CA in CA-G.R. CR No. 00460 with the following *MODIFICATIONS*:

(1) moral damages is INCREASED to ₱50,000.00;

(2) exemplary damages is INCREASED to ₱25,000.00; and

(3) the appellant is ORDERED to pay the heirs of the victim ₱25,000.00 as temperate damages.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 175366. August 11, 2008]

J-PHIL MARINE, INC. and/or JESUS CANDAVA and NORMAN SHIPPING SERVICES, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and WARLITO E. DUMALAOG,** *respondents.*

SYLLABUS

LEGAL ETHICS; RELATION OF ATTORNEY AND CLIENT; GENERAL RULES OF AGENCY APPLY; CONSTRUED. — The relation of attorney and client is in many respects one of agency, and the general rules of agency apply to such relation. The acts of an agent are deemed the acts of the principal only

[*] Designated Additional Member of the Second Division per Special Order No. 512 dated July 16, 2008.

if the agent acts within the scope of his authority. The circumstances of this case indicate that respondent's counsel is acting beyond the scope of his authority in questioning the compromise agreement. That a client has undoubtedly the right to compromise a suit without the intervention of his lawyer cannot be gainsaid, the only qualification being that if such compromise is entered into with the intent of defrauding the lawyer of the fees justly due him, the compromise must be subject to the said fees. In the case at bar, there is no showing that respondent intended to defraud his counsel of his fees. In fact, the Quitclaim and Release, the execution of which was witnessed by petitioner J-Phil's President Eulalio C. Candava and one Antonio C. Casim, notes that the 20% attorney's fees would be "paid 12 April 2007 – ₱90,000."

APPEARANCES OF COUNSEL

Cervantes Blanco Jurisprudencia and Partners for petitioners.
Merito R. Fernandez for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Warlito E. Dumalaog (respondent), who served as cook aboard vessels plying overseas, filed on March 4, 2002 before the National Labor Relations Commission (NLRC) a *pro-forma* complaint[1] against Petitioners — manning agency J-Phil Marine, Inc. (J-Phil), its then President Jesus Candava, and its foreign principal Norman Shipping Services — for unpaid money claims, moral and exemplary damages, and attorney's fees.

Respondent thereafter filed two amended pro forma complaints[2] praying for the award of overtime pay, vacation leave pay, sick leave pay, and disability/medical benefits, he having, by his claim, contracted enlargement of the heart and severe thyroid enlargement in the discharge of his duties as cook which rendered him disabled.

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[1] NLRC records, p. 2.

[2] *Id.* at 8, 50.

Respondent's total claim against petitioners was ₱864,343.30 plus ₱117,557.60 representing interest and ₱195,928.66 representing attorney's fees.[3]

By Decision[4] of August 29, 2003, Labor Arbiter Fe Superiaso-Cellan dismissed respondent's complaint for lack of merit.

On appeal,[5] the NLRC, by Decision of September 27, 2004, reversed the Labor Arbiter's decision and awarded US$50,000.00 disability benefit to respondent. It dismissed respondent's other claims, however, for lack of basis or jurisdiction.[6] Petitioners' Motion for Reconsideration[7] having been denied by the NLRC,[8] they filed a petition for *certiorari*[9] before the Court of Appeals.

By Resolution[10] of September 22, 2005, the Court of Appeals dismissed petitioners' petition for, *inter alia,* failure to attach to the petition all material documents, and for defective verification and certification. Petitioners' Motion for Reconsideration of the appellate court's Resolution was denied;[11] hence, they filed the present Petition for Review on *Certiorari*.

During the pendency of the case before this Court, respondent, against the advice of his counsel, entered into a compromise

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[3] Dumalaog's POSITION PAPER, NLRC records, pp. 18-21.

[4] *Id.* at 115-125.

[5] *Id.* at 132-156.

[6] Decision of September 27, 2004, penned by NLRC Commissioner Romeo L. Go, with the concurrence of Commissioner Ernesto S. Dinopol and the dissent of Commissioner Roy V. Señeres. NLRC records (unnumbered pages).

[7] NLRC records, unnumbered pages.

[8] *Ibid.*

[9] CA *rollo*, pp. 2-19.

[10] Penned by Court of Appeals Associate Justice Danilo B. Pine, with the concurrences of Associate Justices Rosmari D. Carandang and Arcangelita Romilla-Lontok. *Id.* at 48-50.

[11] Penned by Court of Appeals Associate Justice Arcangelita M. Romilla-Lontok, with the concurrence of Associate Justices Regalado E. Maambong and Rosmari D. Carandang. *Id.* at 215-216.

agreement with petitioners. He thereupon signed a Quitclaim and Release subscribed and sworn to before the Labor Arbiter.[12]

On May 8, 2007, petitioners filed before this Court a Manifestation[13] dated May 7, 2007 informing that, *inter alia,* they and respondent had forged an amicable settlement.

On July 2, 2007, respondent's counsel filed before this Court a Comment and Opposition (to Petitioners' Manifestation of May 7, 2007)[14] interposing no objection to the dismissal of the petition but objecting to "the absolution" of petitioners from paying respondent the total amount of Fifty Thousand US Dollars (US$50,000.00) or approximately ₱2,300,000.00, the amount awarded by the NLRC, he adding that:

> There being already a payment of ₱450,000.00, and invoking the doctrine of ***parens patriae***, we pray then [to] this Honorable Supreme Court that the said amount be deducted from the [NLRC] judgment award of US$50,000.00, or approximately ₱2,300,000.00, and petitioners be furthermore ordered to pay in favor of herein respondent [the] remaining balance thereof.
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> x x x x x x x x x[15]

(Emphasis in the original; underscoring supplied)

Respondent's counsel also filed before this Court, *purportedly on behalf of respondent*, a Comment[16] on the present petition.

The parties having forged a compromise agreement as respondent in fact has executed a Quitclaim and Release, the Court dismisses the petition.

Article 227 of the Labor Code provides:

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[12] "Quitclaim and Release" dated April 4, 2007, NLRC records, unnumbered pages.

[13] *Rollo*, pp. 226-228.

[14] *Id.* at 241-243.

[15] *Id.* at 242.

[16] *Id.* at 234-240.

Any compromise settlement, including those involving labor standard laws, **voluntarily agreed upon** by the parties with the assistance of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through **fraud, misrepresentation, or coercion**. (Emphasis and underscoring supplied)

In *Olaybar v. NLRC,*[17] the Court, recognizing the conclusiveness of compromise settlements as a means to end labor disputes, held that Article 2037 of the Civil Code, which provides that "[a] compromise has upon the parties the effect and authority of *res judicata,*" applies suppletorily to labor cases even if the compromise is not judicially approved.[18]

That respondent was not assisted by his counsel when he entered into the compromise does not render it null and void. *Eurotech Hair Systems, Inc. v. Go*[19] so enlightens:

A compromise agreement is valid as long as the consideration is reasonable and the employee signed the waiver voluntarily, with a full understanding of what he was entering into. All that is required for the compromise to be deemed voluntarily entered into is personal and specific individual consent. Thus, contrary to respondent's contention, the employee's counsel need not be present at the time of the signing of the compromise agreement.[20] (Underscoring supplied)

It bears noting that, as reflected earlier, the Quitclaim and Waiver was subscribed and sworn to before the Labor Arbiter.

Respondent's counsel nevertheless argues that "[t]he amount of Four Hundred Fifty Thousand Pesos (₱450,000.00) given to respondent on April 4, 2007, as 'full and final settlement of

[17] G.R. No. 108713, October 28, 1994, 237 SCRA 819.

[18] *Id.* at 823-824 (citations omitted).

[19] G.R. No. 160913, August 31, 2006, 500 SCRA 611.

[20] *Id.* at 618-619.

judgment award,' is unconscionably low, and un-[C]hristian, to say the least."[21] Only respondent, however, can impugn the consideration of the compromise as being unconscionable.

The relation of attorney and client is in many respects one of agency, and the general rules of agency apply to such relation.[22] The acts of an agent are deemed the acts of the principal only if the agent acts within the scope of his authority.[23] The circumstances of this case indicate that respondent's counsel is acting beyond the scope of his authority in questioning the compromise agreement.

That a client has undoubtedly the right to compromise a suit without the intervention of his lawyer[24] cannot be gainsaid, the only qualification being that if such compromise is entered into with the intent of defrauding the lawyer of the fees justly due him, the compromise must be subject to the said fees.[25] In the case at bar, there is no showing that respondent intended to defraud his counsel of his fees. In fact, the Quitclaim and Release, the execution of which was witnessed by petitioner J-Phil's President Eulalio C. Candava and one Antonio C. Casim, notes that the 20% attorney's fees would be "paid 12 April 2007 – ₱90,000."

WHEREFORE, the petition is, in light of all the foregoing discussion, *DISMISSED*.

Let a copy of this Decision be furnished respondent, Warlito E. Dumalaog, at his given address at No. 5-B Illinois Street, Cubao, Quezon City.

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[21] *Rollo*, p. 241.

[22] *Uytengsu III v. Baduel,* Adm. Case No. 5134, December 14, 2005, 477 SCRA 621, 629 (citation omitted).

[23] *Vide Siredy Enterprises, Inc. v. Court of Appeals*, 437 Phil. 580, 589 (2002).

[24] *Vide Rustia v. Judge of First Instance of Batangas*, 44 Phil. 62, 65 (1922).

[25] *Vide Aro v. Nañawa etc., et al.*, 137 Phil. 745, 761 (1969).

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176733. August 11, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FUJITA ZENCHIRO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, BINDING AND CONCLUSIVE UPON THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT; CASE AT BAR. —** As a general rule, the factual findings of the trial court, especially when affirmed by the appellate court as in the cases at bar, are binding and conclusive on the Supreme Court. The above-quoted portions of the trial court's factual findings are supported by the evidence. More particularly, Zenchiro's claim that his involvement in the transaction was limited to mere assistance in the processing of private complainants' travel documents is negated by documentary evidence showing that he received "replayment" fees from them.
2. **CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; WHEN COMMITTED. —** Illegal recruitment is deemed committed in large scale if it is committed against three or more persons individually or as a group. Clearly, Zenchiro committed illegal recruitment against the three private complainants.

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[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

3. **ID.; ID.; FINE MUST BE INCREASED TO FIVE HUNDRED THOUSAND (₱500,000.00); APPLICATION IN CASE AT BAR. —** His conviction in Criminal Case Nos. 3261-M-2001, 3263-M-2001 must thus be affirmed. Section 7 (b) of the Migrant Workers and Overseas Filipinos Act of 1995 imposes a fine of not less than ₱500,000 nor more than ₱1,000,000 if illegal recruitment for overseas employment constitutes economic sabotage – illegal recruitment committed by a syndicate *or* in large scale. Since Zenchiro's act was committed in large scale, the fine of ₱100,000 imposed upon him in Criminal Case No. 3261-M-2001 must be increased to ₱500,000. Considering that Zenchiro already gave Alicia a partial refund of ₱50,000, the actual damages awarded to her in Criminal Case No. 3261-M-2001 is reduced to **₱200,000**, and the awards of actual damages to Alicia in Criminal Cases Nos. 3263-M-2001 and 3264-M-2001 are deleted.

4. **ID.; ID.; IMPOSABLE PENALTY. —** Respecting the penalty imposed in Criminal Case No. 3264-M-2001, Article 315 of the Revised Penal Code provides: Article 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 amounts 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. Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from the range of the penalty next lower in degree to that prescribed under the Revised Penal Code. In this case, the penalty next lower in degree is *prision correccional* in its minimum and medium periods. This Court imposes a minimum penalty of two years of *prision correccional*. With regard to the maximum penalty in Criminal Case No. 3264-M-2001, since the amount involved exceeds ₱22,000, the imposable penalty shall be taken from the maximum period of *prision correccional* maximum period to

prision mayor minimum period, which, when divided into three equal portions following Article 65 of the Revised Penal Code, have the following periods: Minimum period — four years, two months, and one day to five years, five months, and ten days. Medium period — five years, five months, and 11 days to six years, eight months, and 20 days. Maximum period — six years, eight months and 21 days to eight years. Following the above-quoted portion of the provision of Article 315 of the Revised Penal Code, the maximum term of the penalty imposed by the trial court in Criminal Case No. 3264-M-2001 should be increased by one year. Adding one year to the maximum period of the prescribed penalty, which is from six years, eight months and 21 days to eight years of *prision mayor*, the maximum penalty may be taken from seven years, eight months and 21 days to nine years of *prision mayor.* Thus, the maximum penalty imposed by the trial court in Criminal Case No. 3264-M-2001 is increased to seven years, eight months, and 21 days of *prision mayor.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J*.:

Accused-appellant Fujita Zenchiro (Zenchiro), a Japanese national, and one Eva Regino (Eva) were, in an Information filed before the Regional Trial Court (RTC) of Malolos, Bulacan where it was docketed as Criminal Case No. 3261-M-2001, charged to have conspired in committing **illegal recruitment in large scale** as follows:

Criminal Case No. 3261-M-2001:

x x x x x x x x x

That in or about the month of January, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

conspiring and helping each other, non-licensees or non-holders of authority from the Department of Labor and Employment to recruit and/or place workers in employment either locally or overseas, did then and there willfully, unlawfully and feloniously, with false pretenses, undertake illegal recruitment and placement for a fee of Alberto M. Anatalio, Fredie[1] P. Ocampo and Alicia A. Diaz for overseas employment.[2] (Underscoring supplied)

Zenchiro and Eva were, in Informations also filed before the same court where they were docketed as Criminal Cases No. 3262-M-2001, 3263-M-2001, and 3264-M-2001, likewise charged to have conspired in committing three counts of **estafa** under Article 315, paragraph 2 (a) of the Revised Penal Code as follows:

Criminal Case No. 3262-M-2001:

That on or about the 2nd day of February, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully and feloniously defraud Alberto M. Anatalio and Fredie P. Ocampo in the sum of ₱50,000.00 each, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alberto M. Anatalio and Fredie P. Ocampo as worker[s] or assist them in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew, they did not have such qualifications, that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alberto M. Anatalio and Fredie P. Ocampo the sum of ₱50,000.00 each; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of ₱50,000.00 each, for their benefit, to the damage and prejudice of the said Alberto M. Anatalio and Fredie P. Ocampo, in the total amount of ₱100,000.00.[3] (Underscoring supplied)

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[1] Sometimes spelled "Freddie."

[2] Records (Criminal Case No. 3261-M-2001), p. 2.

[3] Records (Criminal Case No. 3262-M-2001), p. 3.

Criminal Case No. 3263-M-2001:

That on or about the 10th of March, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully and feloniously defraud one Alicia A. Diaz in the sum of ₱10,000.00, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alicia A. Diaz as worker or assist her in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew, they did not have such qualifications; that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alicia A. Diaz the sum of ₱10,000.00; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of ₱10,000.00 for their benefit, to the damage and prejudice of the said Alicia A. Diaz in the said amount of ₱10,000.00.[4] (Underscoring supplied)

Criminal Case No. 3264-M-2001:

That on or about the 12th of March, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully, and feloniously defraud one Alicia A. Diaz in the sum of ₱40,000.00, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alicia A. Diaz as worker or assist her in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew they did not have such qualifications, that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alicia A. Diaz the sum of ₱40,000.00; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of ₱40,000.00 for their benefit, to the

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[4] Records (Criminal Case No. 3263-M-2001), p. 2.

damage and prejudice of the said Alicia A. Diaz in the said amount of ₱40,000.00.[5] (Underscoring supplied)

Zenchiro pleaded not guilty to all the charges on arraignment.[6] Eva has remained at large.

From the testimonies of prosecution witnesses-private complainants Alberto Anatalio (Anatalio) and his cousin Fredie Ocampo (Ocampo), the following version is gathered:[7]

In January 1999, Eva introduced private complainants to Zenchiro, telling them that Zenchiro could deploy them to work in Japan. Speaking in "broken" Tagalog, Zenchiro told the two that he would take care of everything because he knows many persons who could work on their papers, and that they would receive a monthly salary of 30 *lapad*, a *lapad* being equivalent to ₱3,500.

Eva and Zenchiro charged ₱250,000 each of the private complainants who each gave him ₱50,000 on February 2, 1999 as downpayment for the processing of their papers. Ocampo's sister, Florinda Cadorna, also a prosecution witness, paid ₱400,000 representing the total balance of Anatalio and Ocampo.[8]

On June 26, 1999, Anatalio and Ocampo, escorted by Zenchiro, went to Japan where they were met by Eva who thereupon accompanied them to her aunt's house in Tokyo where they stayed.

Contrary, however, to Eva's promises that they would be hired at her sister's hanger factory, Anatalio and Ocampo were idle for two months, and whenever they asked her and Zenchiro (who alternately stayed in Japan for one month and the Philippines for another month) about why, Zenchiro and Eva would merely converse with each other in Japanese.

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[5] Records (Criminal Case No. 3264-M-2001), p. 1.

[6] Records (Criminal Case No. 3261-M-2001), p. 45.

[7] TSN, April 25, 2002, pp. 3-18; TSN, July 5, 2002, pp. 2-10.

[8] TSN, May 2, 2002, pp. 25-40.

In September 1999, Anatalio and Ocampo returned to the Philippines upon which they asked Zenchiro to refund the amounts they paid him. Zenchiro did promise to refund them, but he welched thereon, prompting the filing of complaints against him that led to the filing of the Informations.

Anatalio and Ocampo were later to learn that Zenchiro and Eva are neither licensed nor authorized to recruit workers for overseas employment.

From the testimony of private complainant Alicia Diaz (Alicia),[9] the following version is gathered:

Zenchiro offered Alicia a job at the hanger factory in Japan of Eva's sister for a ₱250,000 placement fee, he undertaking to take care of the processing of all her travel documents. Alicia accepted the offer and thus paid Zenchiro the amount in several installments for which she was issued receipts.

On January 12, 1999, Alicia, accompanied by Zenchiro, left for Japan where Eva met them. Eva at once brought her to "Movara" where she stayed with Zenchiro and two Filipinos. After the lapse of a week, she was transferred to Chiba but she remained jobless. Via overseas telephone call to Zenchiro who had gone back to the Philippines, she asked him what they were doing to her, but he gave no answer. Eva even scolded her for calling Zenchiro.

Alicia returned to the Philippines on March 16, 1999 and confronted Eva and Zenchiro who asked for forgiveness, they promising to deploy her to work. The promise remained unfulfilled, however, hence, she demanded the refund of her money, but Zenchiro refunded her only ₱50,000.[10]

Anatalio, Ocampo, and Alicia identified Zenchiro in open court.[11]

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[9] TSN, May 17, 2002, pp. 2-19; TSN, May 24, 2002, pp. 2-19.

[10] Exhibit "J", records (Criminal Case No. 3261-M-2001), p. 83.

[11] TSN, April 25, 2002, p. 12; TSN, July 5, 2002, p. 3; TSN, May 17, 2002, p. 12.

In addition to testimonial evidence, the prosecution presented documentary evidence consisting of private complainants' sworn statements, a certification from the Philippine Overseas Employment Administration[12] that the accused are not licensed to recruit workers for employment overseas, receipts signed by Zenchiro acknowledging receipt of payments for "replayment fee" to Japan,[13] receipts for "VISA ASSISTANCE GOING TO JAPAN" signed by Eva,[14] and receipt signed by Alicia, bearing Zenchiro's signature, acknowledging a partial refund of ₱50,000[15] from Zenchiro.

Upon the other hand, Zenchiro, denying having promised private complainants that he would deploy them for work in Japan,[16] claimed that his involvement in the transactions was limited to assistance in the processing of their travel documents and escorting them to Japan;[17] and that private complainants in fact landed on jobs in Japan[18] in support of which he presented certificates, worded in Japanese, issued by Yugengaisha P-I and Kabushikigaisha Sekine Kagaku Kogyo, said to attest that Anatalio and Ocampo worked in Japan in July up to September 1999.[19]

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[12] Exhibit "B", records, p. 78.

[13] Exhibits "C", "C-1", "D", "D-1", "E", "E-1", "F", "F-1", "G", "G-1", records (Criminal Case No. 3261-M-2001), pp. 79-80, 84.

[14] Exhibits "F", "F-1", "G", "G-1", records (Criminal Case No. 3261-M-2001), p. 81.

[15] Exhibit "J" and its derivatives; Exhibit "4" and its derivatives, records (Criminal Case No. 3261-M-2001) p. 83.

[16] TSN, September 13, 2002, p. 5.

[17] *Vide* TSN, September 13, 2002, pp. 3-10; TSN, December 13, 2002, pp. 2-8; TSN, February 21, 2003, pp. 3-13.

[18] TSN, September 13, 2002, pp. 5-7.

[19] Exhibits "10" and "12" and their derivatives, Records (Criminal Case No. 3261-M-2001), pp. 287-288, 292-293.

By Joint Decision[20] of July 5, 2005, Branch 11 of the RTC of Malolos convicted Zenchiro in Criminal Case Nos. 3261-M-2001 (for illegal recruitment), 3263-M-2001 (for Estafa on complaint of Alicia), and 3264-M-2001 (for Estafa on complaint of Alicia). It dismissed Criminal Case No. 3262-M-2001 (for Estafa on complaint of Anatalio and Ocampo) on the ground of double jeopardy.[21]

In arriving at its Joint Decision, the trial court noted the following findings:

> When the three (3) complainants went to the residence of the Regino's at Sto. Niño, Meycauayan on different occasions, in the early part of January 1999, and the matter of their supposed employment in Japan was taken up Zenchiro was personally present. Regino did much of the talking but as testified to by the complainants she talked with Zenchiro in Nippongo, every now and then ostensibly to apprise him of what was being talked about. Foremost was the representation by Regino, which Zenchiro appears to have acquiesced into, that he was in a position to find work for the complainants in Japan. On this point, Zenchiro's own admission that he offered his own services to work for complainants' Japanese visa was a dead giveaway on his part of his active involvement in the illicit recruitment of the latter to work in Japan. xxx This coupled with the uncontroverted fact that he even escorted the complainants in going to Japan in the months of June, 1999 and January 2000 even living under the same house with Anatalio and Ocampo therein make a strong case against him for the offense charged.
>
> That the complainants were duped into shelling large amounts for fictitious employment in Japan has been convincingly shown. All three (3) were categorical in their assertion that the accused demanded, and received, from each of them the amount of ₱250,000.00 as placement fee, adducing receipts in substantiation of these exactions. In the case of Anatalio and Ocampo, the two (2) were uncontradicted in their claim that, on February 2, 1999, both gave ₱50,000.00 each to Regino as initial payment of their supposed placement fee in the presence of Zenchiro, and on this occasion, the latter told them that he would take care of their papers. Two (2)

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[20] Records (Criminal Case No. 3261-M-2001), pp. 307-312.

[21] *Vide id.* at 311.

days later, before their departure to Japan or on June 24, 1999, Florinda "Bong" Cadorna handed over to Zenchiro ₱400,000.00 duly receipted by the latter who even signed his name in Japanese character[s].

The same situation holds true with Diaz. In her case on March 10, 1999, she gave Regino the initial amount of ₱10,000.00 in her place at Sto. Niño, Meycauayan, Bulacan and two (2) days later or on March 12, 1999, she gave her the additional amount of ₱40,000.00 as downpayment for her replacement fee. After her visa was issued, on December 20, 1999 she gave the amount of ₱100,000.00 in cash and a check worth ₱100,000.00 to Zenchiro personally xxx to complete her employment fee. xxx This transaction between Diaz and the accused is fully substantiated by the receipt dated December 20, 1999 signed by Zenchiro again in Japanese characters. Although Zenchiro made it appear in said receipt that the payment was for visa assistance, the enormity of the amount does not warrant belief to such a pretension[.]

Zenchiro's attempt to show that complainants worked in different firms in Japan is futile. All that he has to show to prove his point are purported certifications from dubious Japanese firms attesting to their supposed employment which from the mere fact that these are written in Japanese characters without any official translation in English hardly deserve any evidentiary value[.]

With the Certification from the POEA that the accused are not licensed to recruit workers either for local and foreign employment, both stand liable for qualified illegal recruitment in large scale under the provisions of the Labor Code, the same having been committed against three (3) persons.[22] (Citations omitted; underscoring supplied)

The trial court thus disposed:

WHEREFORE, in Criminal Case No. 3261-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale defined and penalized under Article 38 (b) in relation to Articles 34 and 39 of the Labor Code of the Philippines, P.D. No. 442, as amended and hereby sentences him to suffer the penalty of Life Imprisonment and a **fine of ₱100,000.00.** Accused is likewise ordered to pay the private complainants the following amounts as actual damages, to wit:

[22] Records (Criminal Case No. 3261-M-2001), pp. 310-311.

1. ₱250,000.00 to Alberto Anatalio;
2. ₱250,000.00 to Freddie Ocampo; and
3. ₱250,000.00 to Alicia Diaz.

In Criminal Case No. 3263-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of Estafa under Art. 315, par. 2(a) of the Revised Penal Code, as amended and hereby sentences him to a prison term ranging from Four (4) months and Twenty (20) days of *Arresto Mayor*, as minimum, up to Two (2) years, Eleven (11) months and Ten (10) days of *prision correccional*, as maximum and to pay Alicia Diaz the amount of ₱10,000.00 as actual damages.

In Criminal Case No. 3264-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of Estafa under Art. 315 par. 2(a) of the Revised Penal Code, as amended and hereby sentences him to a prision term ranging from Four (4) Years, Nine (9) months and Eleven (11) days of *prision correccional*, as minimum, up to **Six (6) years**, Eight (8) months, and One (1) day of *prision mayor* **as maximum** and to pay Alicia Diaz the amount of ₱40,000.00 as actual damages.

Criminal Case No. 3262-M-2001 is hereby DISMISSED.

The cases against Eva Regino are hereby ARCHIVED.

SO ORDERED.[23] (Emphasis and underscoring supplied)

On appeal to the Court of Appeals, Zenchiro assigned to the trial court the following errors:

I

. . . CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF LARGE SCALE ILLEGAL RECRUITMENT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT HIS ACT OF SECURING COMPLAINANTS' JAPANESE VISAS IS UNDER THE TERM "RECRUITMENT AND PLACEMENT".

II

. . . FINDING THE ACCUSED-APPELLANT GUILTY FOR THE CRIME OF ESTAFA DESPITE FAILURE OF THE PROSECUTION

[23] Records (Criminal Case No. 3261-M-2001), pp. 311-312.

TO PROVE BEYOND REASONABLE DOUBT THAT THERE WAS DECEPTION ON HIS PART.[24]

The Court of Appeals affirmed the trial court's decision,[25] hence, Zenchiro's appeal to this Court.[26]

Zenchiro maintains that what he promised to private complainants was assistance in securing their visas, not employment. And he argues that he is not guilty of estafa because there was no deceit, he not having misrepresented that he could obtain jobs for them in Japan.

As a general rule, the factual findings of the trial court, especially when affirmed by the appellate court as in the cases at bar, are binding and conclusive on the Supreme Court.[27] The above-quoted portions of the trial court's factual findings are supported by the evidence. More particularly, Zenchiro's claim that his involvement in the transaction was limited to mere assistance in the processing of private complainants' travel documents is negated by documentary evidence showing that he received "replayment" fees from them.

Zenchiro goes on to reiterate his argument that Eva promised employment to private complainants without his knowledge, he being a Japanese national and could not understand the conversation in Tagalog between Eva and the private complainants. The Court of Appeals' brushing aside such argument is well taken.

In the first place, appellant during his arraignment even assented to the reading of the information in Filipino because according to his counsel it is a language known and understood by him. And as testified to by the private complainants, appellant even spoke to them

[24] CA *rollo*, pp. 54-55.

[25] Decision of October 23, 2006, penned by Court of Appeals Associate Justice Martin S. Villarama, Jr. with the concurrence of Associate Justices Lucas P. Bersamin and Monina Arevalo-Zenarosa; *id* at 104-135.

[26] *Id.* at 146-147.

[27] *Vide Manliclic v. Calaunan*, G.R. No. 150157, January 25, 2007, 512 SCRA 642, 660. Citations omitted.

in broken Tagalog when he was promising them employment in Japan upon payment of placement fee to him and his co-accused Regino. Private complainant Diaz also testified that during their conversation regarding the proposed employment in Japan, while it was Regino who was explaining things to them, Regino would first talk to appellant in Japanese and hence appellant cannot feign ignorance of the dealings and undertakings by Regino with private complainants. Appellant knew and cooperated in the misrepresentations and fraudulent scheme of Regino as they both duped private complainants into shelling substantial amounts of money for those promised jobs as factory workers in Japan.[28] (Underscoring supplied)

In fine, Zenchiro's disclaimer of the charges fails.

Illegal recruitment is deemed committed in large scale if it is committed against three or more persons individually or as a group.[29] Clearly, Zenchiro committed illegal recruitment against the three private complainants.

His conviction in Criminal Case Nos. 3261-M-2001, 3263-M-2001 must thus be affirmed. Section 7 (b) of the Migrant Workers and Overseas Filipinos Act of 1995 imposes a fine of not less than ₱500,000 nor more than ₱1,000,000 if illegal recruitment for overseas employment constitutes economic sabotage — illegal recruitment committed by a syndicate *or* in large scale. Since Zenchiro's act was committed in large scale, the fine of ₱100,000 imposed upon him in Criminal Case No. 3261-M-2001 must be increased to ₱500,000.

Considering that Zenchiro already gave Alicia a partial refund of ₱50,000, the actual damages awarded to her in Criminal Case No. 3261-M-2001 is reduced to **₱200,000**, and the awards of actual damages to Alicia in Criminal Cases Nos. 3263-M-2001 and 3264-M-2001 are deleted.

Respecting the penalty imposed in Criminal Case No. 3264-M-2001, Article 315 of the Revised Penal Code provides:

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[28] CA *rollo*, p. 132.

[29] Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042), Section 6 (m).

Article 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 amounts 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. (Underscoring supplied)

Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from the range of the penalty next lower in degree to that prescribed under the Revised Penal Code. In this case, the penalty next lower in degree is *prision correccional* in its minimum and medium periods. This Court imposes a minimum penalty of two years of *prision correccional*.

With regard to the maximum penalty in Criminal Case No. 3264-M-2001, since the amount involved exceeds ₱22,000, the imposable penalty shall be taken from the maximum period of *prision correccional* maximum period to *prision mayor* minimum period, which, when divided into three equal portions following Article 65 of the Revised Penal Code, have the following periods:

Minimum period — four years, two months, and one day to five years, five months, and ten days.

Medium period — five years, five months, and 11 days to six years, eight months, and 20 days.

Maximum period — six years, eight months and 21 days to eight years.[30]

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[30] *Bonifacio v. People*, G.R. No. 153198, July 11, 2006, 494 SCRA 527, 533.

Following the above-quoted portion of the provision of Article 315 of the Revised Penal Code, the maximum term of the penalty imposed by the trial court in Criminal Case No. 3264-M-2001 should be increased by one year.

Adding one year to the maximum period of the prescribed penalty, which is from six years, eight months and 21 days to eight years of *prision mayor*, the maximum penalty may be taken from seven years, eight months and 21 days to nine years of *prision mayor.*[31] Thus, the maximum penalty imposed by the trial court in Criminal Case No. 3264-M-2001 is increased to seven years, eight months, and 21 days of *prision mayor*.

WHEREFORE, the October 23, 2006 Decision of the Court of Appeals is *AFFIRMED* with the *MODIFICATION* that the fine in Criminal Case No. 3261-M-2001 is ₱500,000. In Criminal Case No. 20-M-2001, the minimum term of the imprisonment imposed is two years of *prision correccional* and the maximum term of the imprisonment imposed is Seven Years, Eight Months and 21 Days of *prision mayor*.

In all other aspects, the appellate court's decision is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

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[31] *Vide People v. Cabais*, G.R. No. 129070, March 16, 2001, 354 SCRA 553, 564.

[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

THIRD DIVISION

[G.R. No. 178067. August 11, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **ABDELKARIM AHMAD ALKODHA,** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STRENGTHENED BY INCONSISTENCIES WHICH REFER TO MINOR, TRIVIAL, OR INCONSEQUENTIAL CIRCUMSTANCES; CASE AT BAR. —** We have held that inconsistencies which refer to minor, trivial, or inconsequential circumstances only serve to strengthen the credibility of said witnesses, as they erase doubts that such testimonies have been coached or rehearsed. The presence of the maid at one point during the afternoon of 14 March 2004, and who between AAA and accused-appellant woke up first on the morning of 15 March 2004 are clearly trivial matters which have no bearing at all on the commission of the crime of rape. Furthermore, an error-free testimony cannot be expected of a rape victim, for she may not be able to remember and recount every ugly detail of the harrowing experience and the appalling outrage she went through, especially so since she might in fact be trying not to recall the same, as they are too traumatic and painful to remember. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect.

2. **ID.; ID.; AFFIDAVITS ARE GENERALLY SUBORDINATE IN IMPORTANCE TO OPEN COURT DECLARATIONS; RATIONALE. —** This Court has held that affidavits are generally subordinate in importance to open court declarations. Affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering

officer and the affiant simply signs them after the same have been read to him.

3. CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE OF THE VICTIM BY THE ACCUSED MAY BE PROVEN BY EITHER DIRECT OR CIRCUMSTANCIAL EVIDENCE; APPLICATION IN CASE AT BAR. — We have ruled that carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused is the perpetrator thereof. The actuations of accused-appellant before AAA fainted, the bleeding of AAA's private part afterwards, and the corroboration by physical evidence on the part of Dr. Palmero, when taken together, convincingly prove the carnal knowledge of AAA by accused-appellant.

4. ID.; ID.; CONVICTION THEREFOR MAY BE BASED SOLELY ON THE TESTIMONY OF THE VICTIM. — In rape cases, the accused may be convicted solely on the testimony of the victim, provided such testimony is credible, natural, convincing and consistent with human nature and the normal course of things; and when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.

5. REMEDIAL LAW; EVIDENCE; ALIBI AS A DEFENSE; 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; NOT PRESENT IN CASE AT BAR. — This Court rejects the accused's defense of alibi. For the defense of alibi to prosper, the accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed physically but also that it was impossible for him to have been at the scene of the crime at the time it was committed. Aside from his testimony, the accused never presented any other evidence to prove that he was not at the scene of the crime at the time the rape took place. He did not present any other witness, whom he claimed was with him during the time he attended the baptismal party until the time he allegedly went to Alabang, Muntinlupa City. Obviously, it was

not physically impossible for him to perpetrate the crime for the alleged baptismal party happened at Caniogan, Pasig City and the rape took place at San Miguel, Pasig City, a few minutes drive to his house, the scene of the crime, in Pasig City. Weak as it is, alibi becomes all the more ineffectual when the accused fails to demonstrate that it was physically impossible for him to be at the crime scene at the time it was committed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Maria Nympha Mandagan for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is an Appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01632 dated 19 March 2007 affirming *in toto* the Decision of the Regional Trial Court (RTC) of Pasig City, in Criminal Cases No. 127752-53-H, which found accused-appellant Abdelkarim Ahmad Alkodha guilty beyond reasonable doubt of two counts of rape.

Accused-appellant was charged with rape in two separate Informations, which read:

In Criminal Case No. 127752-H

On or about March 14, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA],[2] against her will and consent, which is aggravated by the circumstances of abuse of superior strength, nighttime and dwelling, to the damage and prejudice of the said victim.[3]

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo,* pp. 2-13.

[2] *People v. Cabalquinto,* G.R. No. 167693, 19 September 2006.

[3] Records, p. 1.

In Criminal Case No. 127753-H

On or about March 15, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], against her will and consent, which is aggravated by the circumstances of abuse of superior strength, nighttime and dwelling, to the damage and prejudice of the said victim.[4]

The prosecution presented the testimonies of Dr. Joseph C. Palmero and complainant AAA.

Complainant AAA testified that she was hired on 13 March 2004 as a stay-in saleslady at the store of accused-appellant. The following day, on 14 March 2004, AAA did not report for work because accused-appellant requested her to take care of his son, Ahmad. At 5:00 p.m. of the same date, she and accused-appellant went to the Ever Gotesco Mall in Pasig City where the latter bought clothes for AAA. When they arrived home at 11:00 p.m., she and accused-appellant had dinner together.

Later that night, while AAA was watching television with accused-appellant's son, accused-appellant called AAA and talked to her about the policies in his store. AAA went back to the other room but was again called by accused-appellant. Accused-appellant then pulled AAA towards his room, covered her mouth, boxed her on the stomach, dragged her inside his room, and pulled her towards the bed. AAA resisted but accused-appellant succeeded in holding her hands and covering them with pillows. Accused-appellant then undressed her by removing her blouse, pajamas, bra and underwear. Accused-appellant thereafter proceeded to rape her by inserting his penis inside her vagina. AAA felt weak at this time, and was not able to resist. Accused-appellant warned her not to tell anybody; otherwise, he would kill her.

On 15 March 2004, at around 9:00 p.m., accused-appellant and AAA went home from the store and had dinner with Ahmad.

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[4] *Id.* at p. 25.

AAA then went to the comfort room and changed her clothes. She then proceeded to the room of Ahmad. Accused-appellant, however, dragged her inside his room, boxed her right chest and undressed her. Accused-appellant raped her by inserting his penis inside her vagina. AAA went to the comfort room and later left the accused-appellant's room. She initially found it hard to sleep, but was later able to sleep when she took the medicine given by accused-appellant.

On 16 March 2004, while AAA and accused-appellant were at the store, AAA found a chance to escape when accused-appellant went up to the second floor of the store. AAA asked the guard to buy sanitary napkin for her, giving her a chance to escape. She rode a jeepney to a church, where she found a telephone. She called her aunt Divine, who fetched her, brought her to Divine's house, and proceeded to the police station to file a case.

Dr. Palmero testified that he conducted a medical examination of AAA on 16 March 2004 and found that there was a fresh laceration or new tear on the hymen of the victim[5] and superficial abrasions on the right anterior chest.[6] He concluded that his findings were compatible with recent sexual intercourse and loss of virginity.[7]

The defense, on the other hand, presented the testimonies of accused-appellant, Rowena A. Fajardo, Ahmad Abdelkarim, and Senior Police Officer 2 (SPO2) Gerry Bautista.

Accused-appellant testified that he hired AAA on 13 March 2004. On the same date, AAA asked permission to leave early as she was having a headache. AAA went to accused-appellant's house at around 5:00 p.m. together with accused-appellant's son, Ahmad, and accused-appellant's live-in partner, Rowena Fajardo. Accused-appellant went home at around 9:00 p.m.

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[5] TSN, 9 August 2004, p. 8.

[6] *Id.* at 9.

[7] *Id.* at 10.

AAA, Ahmad, and his yaya watched television in Ahmad's room while accused-appellant and Rowena stayed in their room.

On 14 March 2004, accused-appellant, Rowena and AAA went to the store at around 8:00 a.m. Upon arriving thereat, AAA asked for a cash advance of ₱1,500.00 for her to give to her parents. Accused-appellant refused to give AAA the cash advance considering that she was hired as a stay-in saleslady only the day before. At 10:15 a.m., accused-appellant went to the baptismal celebration of the child of SPO2 Jerry Bautista in St. Francis Church, Kapitolyo, Pasig City. After the baptism, they proceeded to Wok-In Restaurant along Shaw Boulevard, Pasig City, for the reception. At around 1:00 p.m., they proceeded to the house of SPO2 Bautista in Pasig City where accused-appellant stayed up to around 8:00 to 8:15 p.m. At around 8:30 p.m., accused-appellant closed his store and dropped off Rowena and AAA in his house. Accused-appellant then went back to the baptismal party. He left the house of Jerry at 12 midnight and proceeded to Metropolis, Alabang, at the house of his cousin where he "followed up the passport of (his) son" and "arranged his papers."[8] He eventually left his cousin's house and arrived in his house at 3:30 a.m. and slept.

On 15 March 2004, accused-appellant woke up at 7:30 a.m. He went to the store at 8:00 a.m. with Rowena and AAA. He left the store with Rowena and AAA at 9:00 p.m. He went home and slept at 10:00 p.m. On 16 March 2004, he went to the store at 7:45 a.m. with Rowena and AAA. At one point, the telephone rang, and AAA answered the phone. Accused-appellant told AAA she had no right to answer the phone since she had been employed in the store for only two days. AAA got upset and left the store. Accused-appellant went to the police station at 11:00 a.m., where he reported the incident. The police officers asked him to come back after an hour. At 12:20 p.m., the police told him that they could not locate AAA with the telephone number and address that he gave them.

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[8] TSN, 25 April 2005, p. 8.

Rowena Fajardo, Ahmad and SPO2 Bautista testified on the whereabouts of accused-appellant during said dates.

On 29 July 2005, the RTC of Pasig City, Branch 262, rendered a Decision finding accused-appellant guilty of two counts of rape, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused ABDELKARIM AHMAD-ALKODHA:
>
> 1. GUILTY beyond reasonable doubt of the crime of Rape in Criminal Case No. 127752-H and he is hereby sentenced to suffer the penalty of *reclusion perpetua*;
> 2. GUILTY beyond reasonable doubt of the crime of Rape in Criminal Case No. 127753-H and he is hereby sentenced to suffer the penalty of *reclusion perpetua*; and
> 3. Further, he is ordered to pay the victim, [AAA] Fifty Thousand Pesos (₱50,000) as civil indemnity; Fifty Thousand Pesos (₱50,000) as moral damages; and Twenty Five Thousand Pesos (₱25,000) as exemplary damages, in each case.[9]

Accused-appellant appealed to the Court of Appeals. On 19 March 2007, the Court of Appeals issued its Decision affirming the Decision of the trial court, thus:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is DISMISSED for lack of merit, and the judgment appealed from AFFIRMED *in toto*. Costs shall be taxed against the accused-appellant.[10]

Accused-appellant elevated his conviction to this Court, assigning the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S HIGHLY INCONSISTENT TESTIMONY.

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[9] CA *rollo*, pp. 31-32.

[10] *Rollo*, p. 12.

II

THE COURT *A QUO* GRAVELY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[11]

Accused-appellant claims there were inconsistencies in the testimony of AAA, to wit:

1. AAA testified that she and the accused-appellant's son, Ahmad, were the only two persons in the house; however, in her sworn statement, she said that at around 5:00 p.m. of 14 March 2004, the accused-appellant called the housemaid to tell AAA to dress up and go to the cell phone store.

2. When asked, "Who woke up first, you or the accused?" AAA answered that she woke up first. Later, when she was asked again, she said that it was accused-appellant who woke up first.

3. On direct examination, AAA testified that she was raped by the accused on 15 March 2004 by inserting his penis into her vagina. However, on cross-examination, she said that she fainted at that time.

We have held that inconsistencies which refer to minor, trivial, or inconsequential circumstances only serve to strengthen the credibility of said witnesses, as they erase doubts that such testimonies have been coached or rehearsed.[12] The presence of the maid at one point during the afternoon of 14 March 2004, and who between AAA and accused-appellant woke up first on the morning of 15 March 2004 are clearly trivial matters which have no bearing at all on the commission of the crime of rape.

Furthermore, an error-free testimony cannot be expected of a rape victim, for she may not be able to remember and recount

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[11] *Id.* at 50.

[12] *People v. Pamor*, G.R. No. 108599, 7 October 1994, 237 SCRA 462, 475.

every ugly detail of the harrowing experience and the appalling outrage she went through, especially so since she might in fact be trying not to recall the same, as they are too traumatic and painful to remember.[13] Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect.[14]

Also, the first discrepancy refers to one between AAA's sworn statement and her testimony in court. This Court has held that affidavits are generally subordinate in importance to open court declarations. Affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to him.[15]

As regards the third alleged discrepancy, AAA's testimony on cross examination is as follows:

Q Would you remember, what time when Kim pulled you to his room?

A No, sir.

Q Did you have any sexual intercourse then?

A I do not know what happened next because I fainted, sir.

Q When was your last time of recollection, Madam witness?

A He was already through with me, sir.

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[13] *People v. Canoy*, 459 Phil. 933, 943 (2003); *People v. Callos*, 419 Phil. 422, 430 (2001); *People v. Aguero, Jr.*, 417 Phil. 836, 849 (2001).

[14] *People v. Perez*, 337 Phil. 244, 250 (1997).

[15] *People v. Sanchez*, 372 Phil. 129, 145 (1999); *People v. Lusa*, 351 Phil. 537, 544 (1998).

Q How did you know he was through with you?

A I was already bleeding, sir.[16]

We do not see an inconsistency here. At most, this only proves that the part of AAA's testimony on direct examination in which AAA said accused-appellant inserted his penis into her vagina did not come from personal knowledge, but from an inference from her bleeding when she woke up. This, however, is not sufficient reason for us to overturn the appealed Decision. We have ruled that carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused is the perpetrator thereof.[17] The actuations of accused-appellant before AAA fainted, the bleeding of AAA's private part afterwards, and the corroboration by physical evidence on the part of Dr. Palmero, when taken together, convincingly prove the carnal knowledge of AAA by accused-appellant.

Accused-appellant then argues that AAA was actuated by improper motives in haling him before the court. Claims accused-appellant:

In this case, there was a strong manifestation of improper motive on the part of the private complainant to testify falsely against the accused or to falsely implicate him in the commission of the crime charged.

First, the private complainant was asking for a One Thousand Five Hundred (Php1,500.00) Pesos advance from the accused and the latter did not give her the said amount since she was still new in the job. *Second*, she was scolded by the accused when she answered the telephone which was the cause of her disappearance from the latter's store.

While it may be debated that the above reasons are too flimsy to accuse a person of a serious crime as rape, still, the private complainant was motivated by hatred and in order to get even with the accused, she filed the instant cases.[18]

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[16] TSN, 20 September 2004, pp. 33-34.

[17] *People v. Sumarago*, 466 Phil. 956, 966 (2004).

[18] Appellant's Brief, *Rollo*, p. 63.

Accused-appellant then proceeds to argue that the application of the presumption that a young Filipina will not charge a person with rape if it is not true goes against the constitutional presumption of innocence.[19] Accused-appellant cites *People v. Godoy*,[20] wherein we held:

> The trial court, in holding for conviction, relied on the *presumptio hominis* that a young Filipina will not charge a person with rape if it is not true. In the process, however, it totally disregarded the more paramount constitutional presumption that an accused is deemed innocent until proven otherwise.
>
> It frequently happens that in a particular case two or more presumptions are involved. Sometimes the presumptions conflict, one tending to demonstrate the guilt of the accused and the other his innocence. In such case, it is necessary to examine the basis for each presumption and determine what logical or social basis exists for each presumption, and then determine which should be regarded as the more important and entitled to prevail over the other. It must, however, be remembered that the existence of a presumption indicating guilt does not in itself destroy the presumption against innocence unless the inculpating presumption, together with all of the evidence, or the lack of any evidence or explanation, is sufficient to overcome the presumption of innocence by proving the defendant's guilt beyond a reasonable doubt until the defendant's guilt is shown in this manner, the presumption of innocence continues.

Accused-appellant was correct in anticipating that we would see the flimsiness of the alleged ill motives he imputed to AAA. He, thus, claims that his actuations of not giving AAA a cash advance and scolding her for answering the phone were enough to create such a deep-seated hatred as to charge him with a very grave crime of rape. Almost needless to state, accused-appellant's arguments remain flimsy.

As regards the jurisprudence concerning the alleged presumption of guilt arising from the accusation by a young Filipina, suffice it to state here that accused-appellant's conviction was not the

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[19] *Id.* at 64.

[20] G.R. Nos. 115908-09, 6 December 1995, 250 SCRA 676, 726-727.

mere result of this jurisprudence, but of the clear and convincing evidence presented by the plaintiff-appellee, consisting of the testimony of AAA and the corroborative medical evidence. In rape cases, the accused may be convicted solely on the testimony of the victim, provided such testimony is credible, natural, convincing and consistent with human nature and the normal course of things;[21] and when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[22]

As regards accused-appellant's defense of alibi, we quote with approval the findings of the trial court:

> Accused Ahmad Alkodha, however, disputes [AAA]'s version claiming that it is not credible due to some improbabilities in her testimony. Firstly, he contends that he cannot possibly commit the crime attributed against him due to physical impossibility. That on March 14, 2004, at or about 8:30 in the evening until 12:00 midnight he was in the house of SPO2 Bautista, whom he had just got acquainted with. They were not even close or intimate with each other. SPO2 Bautista testified that at or about 8:30 of the said date, accused Ahmad-Alkodha left his house to close his store and went back at 9:00 in the evening. However, accused Ahmad-Alkodha told this Court that he left the house of SPO2 Bautista at 8:00 in the evening to close his store. Thereafter, he dropped his wife and [AAA] in their house at Casa Enrica, Mercedes Avenue, San Miguel, Pasig City and returned to the baptismal party at 8:30 in the evening. While it may be true that accused Ahmad-Alkodha stayed in the house of SPO2 Bautista the same cannot be given probative value, being self-serving, for the defense failed to present the other witnesses who were also there as guests of SPO2 Bautista and who could have seen the accused to clarify the inconsistent testimonies of the accused and SPO2 Bautista to this effect.
>
> Secondly, the accused contends that on March 15, 2004, at or about 12:00 midnight he left the house of SPO2 Bautista and went to Alabang, Muntinlupa City to his cousins Abraham and Ali to follow

[21] *People v. Gastador*, 365 Phil. 209, 225 (1999); *People v. Medina*, 360 Phil. 281, 290 (1998).

[22] *People v. Tabion*, 375 Phil. 542, 551-552 (1999).

up his son's passport. Yet, he opted not to present his cousins to prove that he really went to the said place.

Thirdly, accused claims that on March 15, 2004 he could not have raped [AAA] because he was then sleeping with Fajardo in their room. While Ahmad, his "*yaya*" and [AAA] were in the other room. It is not really impossible to commit rape under such a situation. In our judicial experience, we observed that lust is not respecter of time and place (*People vs. Pepito,* G.R. Nos. 147650-52, 2003). The Court has consistently held that for rape to be committed, it is not necessary for the place to be ideal, for rapists bear no respect for locale and time when they carry out their evil deed. The presence of people nearby does not deter rapists from committing their odious act (*People vs. Aspuria*, G.R. Nos. 139240-43, 11-12-02). Again, the accused did not present the "*yaya*" who allegedly was with [AAA] in the room of Ahmad, who had testified that no unusual happened on March 14 and 15, 2004.

x x x x x x x x x

This Court rejects the accused's defense of alibi. For the defense of alibi to prosper, the accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed physically but also that it was impossible for him to have been at the scene of the crime at the time it was committed. Aside from his testimony, the accused never presented any other evidence to prove that he was not at the scene of the crime at the time the rape took place. He did not present any other witness, whom he claimed was with him during the time he attended the baptismal party until the time he allegedly went to Alabang, Muntinlupa City. Obviously, it was not physically impossible for him to perpetrate the crime for the alleged baptismal party happened at Caniogan, Pasig City and the rape took place at San Miguel, Pasig City, a few minutes drive to his house, the scene of the crime, in Pasig City. Weak as it is, alibi becomes all the more ineffectual when the accused fails to demonstrate that it was physically impossible for him to be at the crime scene at the time it was committed.[23]

Finally, accused-appellant argues that if he was indeed guilty, he would not have sought the help of police officers in locating

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[23] CA *rollo,* pp. 29-31.

AAA as evidenced by the blotter that was presented.[24] We are not swayed by this argument. The police blotter presented by accused-appellant clearly shows that his seeking the help of police officers was in reaction to the complaint filed by AAA against him:

> PAGE NO. : 0417
> ENTRY NO. : 1845
> DATE : 16 March 2004
> TIME : 6:30 pm
>
> Reportee one Abdel Karim Ahmad Alkodha, 46 yrs. Old, married, businessman and a resident of Unit 11 Casa Enrica, Mercedez Ave., Brgy. Caniogan, Pasig City came/appeared to this office and reported that one [AAA], of legal age, a resident of XXX allegedly asked advance payment to the reportee to give to her family in the province. Said subject was allegedly employed for two days only as Sales Lady. According to the reportee, said subject **allegedly fabricated a complaint against complainant without basis** and he requested that this particular incident be recorded on the police blotter for future reference as shown his signature below.
>
> Signed
> Abdelkarim Ahmad Alkodha[25]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01632 dated 19 March 2007 affirming *in toto* the Decision of the Regional Trial Court of Pasig in Criminal Cases No. 127752-53-H, which found accused-appellant Abdelkarim Ahmad Alkodha guilty beyond reasonable doubt of two counts of rape is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[24] Appellant's Brief, *rollo*, p. 63.

[25] Records, p. 224.

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 29 July 2008.

FIRST DIVISION

[G.R. No. 178759. August 11, 2008]

CHEVRON PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF THE BUREAU OF CUSTOMS,** *respondent.*

SYLLABUS

1. **TAXATION; TARIFF AND CUSTOMS CODE (TCC); "ENTRY" UNDER THE CUSTOMS LAW; DEFINED AND CONSTRUED. —** The term "entry" in customs law has a triple meaning. It means (1) the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house. The IED serves as basis for the payment of advance duties on importations whereas the IEIRD evidences the final payment of duties and taxes. The question is: was the filing of the IED sufficient to constitute "entry" under the TCC? The law itself, in Section 205, defines the meaning of the technical term "entered" as used in the TCC: Section 205. Entry, or Withdrawal from Warehouse, for Consumption. — **Imported articles shall be deemed "entered" in the Philippines for consumption when the specified entry form is properly filed and accepted,** together with any related documents regained by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid at the time of making such entry have been paid or secured to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry. x x x Clearly, the operative act that constitutes "entry" of the imported articles at the port of entry is the filing and acceptance of the "specified entry form" together with the other documents required by law and regulations. There is no dispute that the "specified entry form" refers to the IEIRD. Section 205 defines the precise moment when the imported articles are deemed "entered." Moreover, in the old case of *Go Ho Lim v. The Insular Collector of Customs*, we ruled that the word "entry" refers to the regular consumption entry

(which, in our current terminology, is the IEIRD) and not the provisional entry (the IED):

2. **ID.; ID.; ID.; IMPORT ENTRY DECLARATIONS (IED) AND IMPORT ENTRY AND INTERNAL REVENUE DECLARATIONS (EIRD); BOTH IED AND IEID SHOULD BE FILED WITHIN 30 DAYS FROM THE DATE OF DISCHARGE OF THE LAST PACKAGE FROM THE VESSEL OR AIRCRAFT; RATIONALE. —** The filing of the IEIRDs has several important purposes: to ascertain the value of the imported articles, collect the correct and final amount of customs duties and avoid smuggling of goods into the country. Petitioner's interpretation would have an absurd implication: the 30-day period applies only to the IED while no deadline is specified for the submission of the IEIRD. Strong issues of public policy militate against petitioner's interpretation. It is the IEIRD which accompanies the final payment of duties and taxes. These duties and taxes must be paid in full before the BOC can allow the release of the imported articles from its custody. Taxes are the lifeblood of the nation. Tariff and customs duties are taxes constituting a significant portion of the public revenue which enables the government to carry out the functions it has been ordained to perform for the welfare of its constituents. Hence, their prompt and certain availability is an imperative need and they must be collected without unnecessary hindrance. Clearly, and perhaps for that reason alone, the submission of the IEIRD cannot be left to the exclusive discretion or whim of the importer. We hold, therefore, that under the relevant provisions of the TCC, both the IED and IEIRD should be filed within 30 days from the date of discharge of the last package from the vessel or aircraft. As a result, the position of petitioner, that the import entry to be filed within the 30-day period refers to the IED and not the IEIRD, has no legal basis.

3. **ID.; ID.; FRAUD; WHEN EXISTENCE THEREOF ESTABLISHED; EFFECT. —** Fraud, in its general sense, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another." It is a question of fact and the circumstances constituting it must be alleged and proved in the court below. The finding of the lower court

as to the existence or non-existence of fraud is final and cannot be reviewed here unless clearly shown to be erroneous. In this case, fraud was established by the IPD-CIIS of the BOC. Both the CTA First Division and *en banc* agreed completely with this finding. x x x It was not by sheer coincidence that, by the time petitioner filed its IEIRDs way beyond the mandated period, the rate of duty had already been reduced from 10% to 3%. Both the CTA Division and *en banc* found the explanation of petitioner (for its delay in filing) untruthful. The bills of lading and corresponding invoices covering the shipments were accomplished immediately after loading onto the vessels. Notably, the memorandum of a district collector cited by petitioner as basis for its assertion that original copies were required by the BOC was dated October 30, 2002. There is no showing that in 1996, the time pertinent in this case, this was in fact a requirement. More importantly, the absence of supporting documents should not have prevented petitioner from complying with the mandatory and non-extendible period, specially since the consequences of delayed filing were extremely serious. In addition, these supporting documents were not conclusive on the government. If this kind of excuse were to be accepted, then the collection of customs duties would be at the mercy of importers. Hence, due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable: Section 1603. *Finality of Liquidation*. — When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, **in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

4. ID.; ID.; ABANDONMENT IN FAVOR OF THE GOVERNMENT, EXPLAINED. — The law is clear and explicit. It gives a non-extendible period of 30 days for the importer to file the entry which we have already ruled pertains to **both** the IED and IEIRD. Thus under Section 1801 in relation to Section 1301, when the importer fails to file the entry within the said period, he "shall be deemed to have renounced all his interests and property rights" to the importations and these shall be considered impliedly abandoned in favor of the government: Section 1801.

Abandonment, Kinds and Effect of. — x x x **Any person who abandons an article** or who fails to claim his importation as provided for in the preceding paragraph **shall be deemed to have renounced all his interests and property rights therein.** x x x After it was amended by RA 7651, there was an indubitable shift in language as to what could be considered implied abandonment: Section 1801. Abandonment, Kinds and Effect of. — An imported article is **deemed abandoned** under any of the following circumstances: a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or b. When the owner, importer, consignee or interested party after due notice, **fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel** or aircraft x x x From the wording of the amendment, RA 7651 no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the intention to abandon) but opted to omit them. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.

5. **ID.; ID.; ID.; WHEN DUE NOTICE IS NOT NECESSARY; RATIONALE. —** Under the peculiar facts and circumstances of this case, due notice was not necessary. The shipments arrived in 1996. The IEDs and IEIRDs were also filed in 1996. However, respondent discovered the fraud which attended the importations and their subsequent release from the BOC's custody only in 1999. Obviously, the situation here was not an ordinary case of abandonment wherein the importer merely decided not to claim its importations. Fraud was established against petitioner; it colluded with the former District Collector. Because of this, the scheme was concealed from respondent. The government was unable to protect itself until the plot was uncovered. The government cannot be crippled by the malfeasance of its officials and employees. Consequently, it was impossible for respondent to comply with the requirements under the rules. x x x Furthermore, notice to petitioner was unnecessary because it was fully aware that its shipments had in fact arrived in the Port of Batangas. The oil shipments were discharged from the carriers docked in its private pier or wharf,

into its shore tanks. From then on, petitioner had actual physical possession of its oil importations. It was thus incumbent upon it to know its obligation to file the IEIRD within the 30-day period prescribed by law. As a matter of fact, importers such as petitioner can, under existing rules and regulations, file in advance an import entry even before the arrival of the shipment to expedite the release of the same. However, it deliberately chose not to comply with its obligation under Section 1301. The purpose of posting an "urgent notice to file entry" pursuant to Section B.2.1 of CMO 15-94 is only to notify the importer of the "arrival of its shipment" and the details of said shipment. Since it already had knowledge of such, notice was superfluous. Besides, the entries had already been filed, albeit belatedly. It would have been oppressive to the government to demand a literal implementation of this notice requirement.

6. **ID.; ID.; ID.; ABANDONED ARTICLE SHALL *IPSO FACTO* BE DEEMED THE PROPERTY OF THE GOVERNMENT; "*IPSO FACTO*"; DEFINED AND CONSTRUED. —** The term "*ipso facto*" is defined as "by the very act itself" or "by mere act." Probably a closer translation of the Latin term would be "by the fact itself." Thus, there was no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government. Ownership over the abandoned importation was transferred to the government by operation of law under Section 1802 of the TCC, as amended by RA 7651. x x x No doubt, by using the term "*ipso facto*" in Section 1802 as amended by RA 7651, the legislature removed the need for abandonment proceedings and for a declaration that the imported articles have been abandoned before ownership thereof can be transferred to the government.

7. **POLITICAL LAW; STATUTES; CONSTITUTIONALITY OR VALIDITY OF LAWS, ORDERS, OR SUCH OTHER RULES WITH THE FORCE OF LAW CANNOT BE COLLATERALLY ATTACKED. —** In effect, petitioner is challenging the constitutionality of Sections 1801 and 1802 by contending that said provisions are violative of substantive and procedural due process. We disallow this collateral attack on a presumably valid law: We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally.

There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands. Besides, [a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. x x x The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.

8. **REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSIONS OF THE COURT OF TAX APPEALS; ACCORDED GREAT RESPECT AND ARE GENERALLY UPHELD BY THE SUPREME COURT. —** By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CORONA, *J*.:

This is a petition for review on *certiorari*[1] of the decision[2] and resolution[3] of the Court of Tax Appeals (CTA) *en banc*

[1] Under Rule 45 of the Rules of Court in relation to Rule 16 of the Revised Rules of the Court of Tax Appeals.

[2] Penned by Associate Justice Juanito C. Castañeda and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista dissented. *Rollo*, pp. 86-133.

[3] *Id.*, pp. 134-138.

dated March 1, 2007 and July 5, 2007, respectively, in CTA EB Nos. 121 and 122 which reversed the decision of the CTA First Division dated April 5, 2005 in CTA Case No. 6358.

Petitioner Chevron Philippines, Inc.[4] is engaged in the business of importing, distributing and marketing of petroleum products in the Philippines. In 1996, the importations subject of this case arrived and were covered by eight bills of lading, summarized as follows:

PRODUCT	ARRIVAL DATE	VESSEL
66,229,960 liters Nan Hai Crude Oil	3/8/1996	Ex MT Bona Spray
6,990,712 liters Reformate	3/18/1996	Ex MT Orient Tiger
16,651,177 liters FCCU Feed Stock	3/21/1996	Ex MT Probo Boaning
236,317,862 liters Oman/Dubai Crude Oil	3/26/1996	Ex MT Violet
51,878,114 liters Arab Crude Oil	4/10/1996	Ex MT Crown Jewel[5]

The shipments were unloaded from the carrying vessels onto petitioner's oil tanks over a period of three days from the date of their arrival. Subsequently, the import entry declarations (IEDs) were filed and 90% of the total customs duties were paid. The import entry and internal revenue declarations (IEIRDs) of the shipments were thereafter filed on the following dates:

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[4] Formerly known as Caltex (Philippines), Inc.

[5] *Rollo*, p. 88.

ENTRY NO.	PRODUCT	ARRIVAL DATE	IED	IEIRD
606-96	66,229,960 liters Nan Hai Crude Oil	3/8/1996	3/12/1996	5/10/1996
604-96	6,990,712 liters Reformate	3/18/1996	3/26/1996	5/10/1996
605-96	16,651,177 liters FCCU Feed Stock	3/21/1996	3/26/1996	5/10/1996
600-96 601-96 602-96 603-96	236,317,862 liters Oman/Dubai Crude Oil	3/26/1996	3/28/1996	5/10/1996
818-96	51,878,114 liters Arab Crude Oil	4/10/1996	4/10/1996	6/21/1996

The importations were appraised at a duty rate of 3% as provided under RA 8180[6] and petitioner paid the import duties amounting to ₱316,499,021.[7] Prior to the effectivity of RA 8180 on April 16, 1996, the rate of duty on imported crude oil was 10%.

Three years later, then Finance Secretary Edgardo Espiritu received a letter (with annexes) dated June 10, 1999 from a certain Alfonso A. Orioste denouncing the deliberate concealment, manipulation and scheme employed by petitioner and Pilipinas Shell in the importation of crude oil, thereby resulting in huge losses of revenue for the government. This letter was endorsed to the Bureau of Customs (BOC) for investigation on July 19, 1999.[8]

On January 28, 2000, petitioner received a *subpoena duces tecum/ad testificandum* from Conrado M. Unlayao, Chief of the Investigation and Prosecution Division, Customs Intelligence and Investigation Service (IPD-CIIS) of the BOC, to submit pertinent documents in connection with the subject shipments

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[6] Otherwise known as the Downstream Oil Industry Deregulation Act of 1996.

[7] *Rollo*, p. 121.

[8] *Id.*, p. 89.

pursuant to the investigation he was conducting thereon. It appeared, however, that the Legal Division of the BOC was also carrying out a separate investigation. Atty. Roberto Madrid (of the latter office) had gone to petitioner's Batangas Refinery and requested the submission of information and documents on the same shipments. This prompted petitioner to seek the creation of a unified team to exclusively handle the investigation.[9]

On August 1, 2000, petitioner received from the District Collector of Customs of the Port of Batangas (District Collector) a demand letter requiring the immediate settlement of the amount of ₱73,535,830 representing the difference between the 10% and 3% tariff rates on the shipments. In response, petitioner wrote the District Collector to inform him of the pending request for the creation of a unified team with the exclusive authority to investigate the matter. Furthermore, petitioner objected to the demand for payment of customs duties using the 10% duty rate and reiterated its position that the 3% tariff rate should instead be applied. It likewise raised the defense of prescription against the assessment pursuant to Section 1603 of the Tariff and Customs Code (TCC). Thus, it prayed that the assessment for deficiency customs duties be cancelled and the notice of demand be withdrawn.[10]

In a letter petitioner received on October 12, 2000, respondent Commissioner of the BOC[11] stated that it was the IPD-CIIS which was authorized to handle the investigation, to the exclusion of the Legal Division and the District Collector.[12]

The IPD-CIIS, through Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr., issued a finding dated February 2, 2001 that the import entries were filed beyond the 30-day non-extendible period prescribed under Section 1301 of the TCC. They concluded that the

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[9] *Id.*

[10] *Id.*, pp. 89,142-145.

[11] Through Commissioner Renato A. Ampil.

[12] *Rollo*, pp. 90, 146.

importations were already considered abandoned in favor of the government. They also found that fraud was committed by petitioner in collusion with the former District Collector.[13]

Thereafter, respondent[14] wrote petitioner on October 29, 2001 informing it of the findings of irregularity in the filing and acceptance of the import entries beyond the period required by customs law and in the release of the shipments after the same had already been deemed abandoned in favor of the government. Petitioner was ordered to pay the amount of ₱1,180,170,769.21 representing the total dutiable value of the importations.[15]

This prompted petitioner to file a petition for review in the CTA First Division on November 28, 2001, asking for the reversal of the decision of respondent.[16]

In a decision promulgated on April 5, 2005, the CTA First Division ruled that respondent was correct when he affirmed the findings of the IPD-CIIS on the existence of fraud. Therefore, prescription was not applicable. Ironically, however, it also held that petitioner did not abandon the shipments. The shipments should be subject to the 10% rate prevailing at the time of their withdrawal from the custody of the BOC pursuant to Sections 204, 205 and 1408 of the TCC. Petitioner was therefore liable for deficiency customs duties in the amount of ₱105,899,569.05.[17]

Petitioner sought reconsideration of the April 5, 2005 decision while respondent likewise filed his motion for partial

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[13] *Id.*, pp. 90-93. The name of this former District Collector does not appear in the *rollo*.

[14] Through Commissioner Titus B. Villanueva.

[15] *Rollo*, pp. 93, 147.

[16] *Id.*, pp. 93, 149-157. The October 29, 2001 demand letter is a decision within the purview of Section 7, RA 1125 (An Act Creating the CTA [1954]). According to the decision of the CTA First Division, the BOC sent another letter, dated December 28, 2001, demanding payment of the deficiency customs duties. Since petitioner did not pay, the BOC instituted a civil case for collection of a sum of money docketed as civil case no. 02-103239 in the Regional Trial Court, Manila, Branch 25 on April 11, 2002. (*Id.*, p. 167.)

[17] This includes a 25% surcharge due to fraud; *id.*, p. 180.

reconsideration. Both motions were denied in a resolution dated September 9, 2005.[18]

After both respondent and petitioner had filed their petitions for review with the CTA *en banc*, docketed as CTA EB No. 121 and CTA EB No. 122, respectively, the petitions were consolidated.

In a decision dated March 1, 2007, the CTA *en banc* held that it was the filing of the IEIRDs that constituted entry under the TCC. Since these were filed beyond the 30-day period, they were not seasonably "entered" in accordance with Section 1301 in relation to Section 205 of the TCC. Consequently, they were deemed abandoned under Sections 1801 and 1802 of the TCC. It also ruled that the notice required under Customs Memorandum Order No. 15-94 (CMO 15-94) was not necessary in view of petitioner's actual knowledge of the arrival of the shipments. It likewise agreed with the CTA Division's finding that petitioner committed fraud when it failed to file the IEIRD within the 30-day period with the intent to "evade the higher rate." Thus, petitioner was ordered to pay respondent the total dutiable value of the oil shipments amounting to ₱893,781,768.21.[19]

Hence this petition.

There are three issues for our resolution:

1. whether "entry" under Section 1301 in relation to Section 1801 of the TCC refers to the IED or the IEIRD;
2. whether fraud was perpetrated by petitioner and
3. whether the importations can be considered abandoned under Section 1801.

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[18] *Id.*, pp. 236-240.

[19] The total amount of duties paid amounting to ₱316,499,021 was subtracted from the total dutiable value of the shipments amounting to ₱1,210,280,789.21; *id.*, p. 121.

"ENTRY" IN SECTIONS 1301 AND 1801 OF THE TCC REFERS TO BOTH THE IED AND IEIRD

Under Section 1301 of the TCC, imported articles must be entered within a non-extendible period of 30 days from the date of discharge of the last package from a vessel. Otherwise, the BOC will deem the imported goods impliedly abandoned under Section 1801. Thus:

Section 1301. Persons Authorized to Make Import Entry. — **Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible from date of discharge of the last package from the vessel** or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute *prima facie* evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful. (Emphasis supplied)

Section 1801. Abandonment, Kinds and Effect of. — An imported article is **deemed abandoned** under any of the following circumstances:

x x x x x x x x x

b. When the owner, importer, consignee or interested party after due notice, **fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel** or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation. (Emphasis supplied)

Petitioner argues that the IED is an entry contemplated by these sections. According to it, the congressional deliberations on RA 7651 which amended the TCC to provide a non-extendible

30-day period show the legislative intent to expedite the procedure for declaring importations as abandoned. Filing an entry serves as notice to the BOC of the importer's willingness to complete the importation and to pay the proper taxes, duties and fees. Conversely, the non-filing of the entry within the period connotes the importer's disinterest and enables the BOC to consider the goods as abandoned. Since the IED is a BOC form that serves as basis for payment of advance duties on importation as required under PD 1853,[20] it suffices as an entry under Sections 1301 and 1801 of the TCC.[21]

We disagree.

The term "entry" in customs law has a triple meaning. It means (1) the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house.[22]

The IED serves as basis for the payment of advance duties on importations whereas the IEIRD evidences the final payment of duties and taxes. The question is: was the filing of the IED sufficient to constitute "entry" under the TCC?

The law itself, in Section 205, defines the meaning of the technical term "entered" as used in the TCC:

Section 205. Entry, or Withdrawal from Warehouse, for Consumption. — **Imported articles shall be deemed "entered" in the Philippines for consumption when the specified entry**

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[20] PD 1853 was the law that took effect on January 1, 1983, requiring deposits of duties upon the opening of letters of credit to cover imports. Section 2 thereof states:

> "Section 2. The amount of the duties due shall be based on the declaration of the applicant for the letter of credit/importer, subject to the penalties prescribed under Sec. 2503 of the [TCC] of 1978, as amended."

[21] *Rollo*, pp. 32-36.

[22] *Rodriguez v. CA*, G.R. No. 115218, 18 September 1995, 248 SCRA 288, 297, citing the Tariff and Customs Code, Section 1201 and IV Tejam, Commentaries on the Revised Tariff and Customs Code 2230 [1987].

form is properly filed and accepted, together with any related documents regained by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid at the time of making such entry have been paid or secured to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.

x x x x x x x x x

(Emphasis supplied)

Clearly, the operative act that constitutes "entry" of the imported articles at the port of entry is the filing and acceptance of the "specified entry form" together with the other documents required by law and regulations. There is no dispute that the "specified entry form" refers to the IEIRD. Section 205 defines the precise moment when the imported articles are deemed "entered."

Moreover, in the old case of *Go Ho Lim v. The Insular Collector of Customs*,[23] we ruled that the word "entry" refers to the regular consumption entry (which, in our current terminology, is the IEIRD) and not the provisional entry (the IED):

It is disputed by the parties whether the application for the special permit. Exhibit A, containing the misdeclared weight of the 800 cases of eggs, comes within the meaning of the word "entry" used in section 1290 of the Revised Administrative Code, or said word **"entry"** means only the "original entry and importer's declaration." The court below reversed the decision of the Insular Collector of Customs on the ground that the provisions of section 1290 of the Revised Administrative Code **refer to the regular consumption entry and not to a provisional declaration** made in an application for a special permit, as the one filed by the appellee, to remove the cases of eggs from the customhouse.

This court is of the opinion that certainly the application, Exhibit A, cannot be considered as a final regular entry of the weight of the

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[23] 64 Phil. 64 (1937).

800 cases of eggs imported by the appellee, taking into account the fact that said application sought the delivery of said 800 cases of eggs "from the pier after examination," and the special permit granted, Exhibit E, provided for "delivery to be made after examination by the appraiser." All the foregoing, together with the circumstance that the appellee had to file the regular consumption entry which he bound himself to do, as shown by the application, Exhibit A, logically lead to the conclusion that the declaration of the weight of the 800 cases of eggs made in said application, is merely a provisional entry, and as it is subject to verification by the customhouse examiner, it cannot be considered fraudulent for the purpose of imposing a surcharge of customs duties upon the importer.[24] (Emphasis supplied)

The congressional deliberations on House Bill No. 4502 which was enacted as RA 7651[25] amending the TCC lay down the policy considerations for the non-extendible 30-day period for the filing of the import entry in Section 1301:

MR. JAVIER (E.).

x x x x x x x x x

Under Sections 1210[26] and 1301 of the [TCC], Mr. Speaker, import entries for imported articles must be filed within five days from

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[24] *Id.*, pp. 66-67. See *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, 31 March 2005, 454 SCRA 301, 304.

[25] An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Costoms Code of the Philippines, as Amended (Approved on June 4, 1993).

[26] Section 1210. - *Disposition of Imported Articles Remaining on Vessel After Time for Unlading*.— Imported articles remaining on board any vessel after the expiration of the said period for discharge and not reported for transshipment to another port, may be unladen by the customs authorities and stored at the vessel's expense.

Unless prevented by causes beyond the vessel's control, such as port congestion, strikes, riots or civil commotions, failure of vessel's gear, bad weather, and similar causes, articles so stored shall be entered within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft and shall be claimed within fifteen (15) days, which shall not likewise be extendible from the date of posting of the notice to claim in conspicuous places in the [BOC]. If not entered or not claimed, it shall be disposed of in accordance with the provisions of this Code.

the date of discharge of the last package from the vessel. The five-day period, however, Mr. Speaker, is subject to an **indefinite extension at the discretion of the collector of customs**, which more often than not stretches to more than three months, thus **resulting in considerable delay in the payment of duties and taxes**.

This bill, Mr. Speaker, seeks to amend Sections 1210 and 1301 **by extending the five-day period to thirty days, which will no longer be extendible**, within which import entries must be filed for imported articles. Moreover, to give the importer reasonable time, the bill prescribes a period of fifteen days which may not be extended within which to claim his importation from the time he filed the import entry. Failure to file an import entry or to claim the imported articles within the period prescribed under the proposed measure, such imported articles will be treated as abandoned and declared as *ipso facto* the property of the government to be sold at public auction.

Under this new procedure, Mr. Speaker, **importers will be constrained under the threat of having their importation declared as abandoned** and forfeited in favor of the government **to file import entries and claim their importation as early as possible thus accelerating the collection of duties and taxes.** But providing for a non-extendible period of 30 days within which to file an import entry, an appeal of fifteen days within which to claim the imported article, the bill has removed the discretion of the collector of Customs to extend such period thus minimizing opportunity for graft. Moreover, Mr. Speaker, with these non-extendible periods coupled with the threat of declaration of abandonment of imported articles, both the [BOC] and the importer are under pressure to work for the early release of cargo, thus decongesting all ports of entry and facilitating the release of goods and thereby promoting trade and commerce.

Finally, Mr. Speaker, the speedy release of imported cargo coupled with the sanctions of declaration of abandonment and forfeiture will minimize the pilferage of imported cargo at the ports of entry.[27] (Emphasis supplied)

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[27] Sponsorship Speech of Exequiel B. Javier, March 22, 1993.

The filing of the IEIRDs has several important purposes: to ascertain the value of the imported articles, collect the correct and final amount of customs duties and avoid smuggling of goods into the country.[28] Petitioner's interpretation would have an absurd implication: the 30-day period applies only to the IED while no deadline is specified for the submission of the IEIRD. Strong issues of public policy militate against petitioner's interpretation. It is the IEIRD which accompanies the final payment of duties and taxes. These duties and taxes must be paid in full before the BOC can allow the release of the imported articles from its custody.

Taxes are the lifeblood of the nation. Tariff and customs duties are taxes constituting a significant portion of the public revenue which enables the government to carry out the functions it has been ordained to perform for the welfare of its constituents.[29] Hence, their prompt and certain availability is an imperative need[30] and they must be collected without unnecessary hindrance.[31] Clearly, and perhaps for that reason alone, the submission of the IEIRD cannot be left to the exclusive discretion or whim of the importer.

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[28] *Rollo*, p. 176.

[29] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 106611, 21 July 1994, 234 SCRA 348, 356; *Commissioner of Customs v. Makasiar*, G.R. No. 79307, 29 August 1989, 177 SCRA 27, 34. According to then Senator Gloria Macapagal-Arroyo (now President of the Republic of the Philippines):

> "The [BOC] is one of the premier revenue collecting arms of the Government, who together with the Bureau of the Internal Revenue accounts for the collection of more than eighty percent (80%) of government revenue." (March 29, 1993, Explanatory Note of Senate Bill No. 451, p. 14)

[30] *Commissioner of Internal Revenue v. Goodrich International Rubber Co.*, G.R. No. L-22265, 27 March 1968, 22 SCRA 1256, 1257; *Commissioner of Internal Revenue v. Pineda*, G.R. No. L-22734, 15 September 1967, 21 SCRA 105, 110.

[31] *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 125704, 28 August 1998, 294 SCRA 687, 696.

We hold, therefore, that under the relevant provisions of the TCC,[32] both the IED and IEIRD should be filed within 30 days from the date of discharge of the last package from the vessel or aircraft. As a result, the position of petitioner, that the import entry to be filed within the 30-day period refers to the IED and not the IEIRD, has no legal basis.

THE EXISTENCE OF FRAUD WAS ESTABLISHED

Petitioner also denies the commission of fraud. It maintains that it had no predetermined and deliberate intention not to comply with the 30-day period in order to evade the payment of the 10% rate of duty. Its sole reason for the delayed filing of IEIRDs was allegedly due to the late arrival of the original copies of the bills of lading and commercial invoices which its suppliers could send only after the latter computed the average monthly price of crude oil based on worldwide trading. It claims that the BOC required these original documents to be attached to the IEIRD.

Petitioner's arguments lack merit.

Fraud, in its general sense, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."[33] It is a question of fact and the circumstances constituting it must be alleged and proved in the court below.[34] The finding of the lower court as to the existence or non-existence of fraud is final and cannot be reviewed here unless clearly

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[32] Sections 205, 1301 and 1801.

[33] *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, 14 September 2004, 438 SCRA 290, 300, citing *Commissioner of Internal Revenue v. CA*, 327 Phil. 1, 33 (1996).

[34] *Commissioner of Internal Revenue v. Ayala Securities Corporation*, G.R. No. L-29485, 31 March 1976, 70 SCRA 205, 209.

shown to be erroneous.[35] In this case, fraud was established by the IPD-CIIS of the BOC. Both the CTA First Division and *en banc* agreed completely with this finding.

The evidence showed that petitioner bided its time to file the IEIRD so as to avail of a lower rate of duty. (At or about the time these developments were taking place, the bill lowering the duty on these oil products from 10% to 3% was already under intense discussion in Congress.) There was a calculated and preconceived course of action adopted by petitioner purposely to evade the payment of the correct customs duties then prevailing. This was done in collusion with the former District Collector, who allowed the acceptance of the late IEIRDs and the collection of duties using the 3% declared rate. A clear indication of petitioner's deliberate intention to defraud the government was its non-disclosure of discrepancies on the duties declared in the IEDs (10%) and IEIRDs (3%) covering the shipments.[36]

It was not by sheer coincidence that, by the time petitioner filed its IEIRDs way beyond the mandated period, the rate of duty had already been reduced from 10% to 3%. Both the CTA Division and *en banc* found the explanation of petitioner (for its delay in filing) untruthful. The bills of lading and corresponding invoices covering the shipments were accomplished immediately after loading onto the vessels.[37] Notably, the memorandum of a district collector cited by petitioner as basis for its assertion that original copies were required by the BOC was dated October 30, **2002**.[38] There is no showing that in 1996, the time pertinent in this case, this was in fact a requirement.

More importantly, the absence of supporting documents should not have prevented petitioner from complying with the mandatory and non-extendible period, specially since the consequences of delayed filing were extremely serious. In addition, these supporting

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[35] *Id.*, pp. 209-210, citations omitted.

[36] *Rollo*, p. 178.

[37] *Id.*, pp. 108-109.

[38] *Id.*, p. 68.

documents were not conclusive on the government.[39] If this kind of excuse were to be accepted, then the collection of customs duties would be at the mercy of importers.

Hence, due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable:

Section 1603. *Finality of Liquidation*. — When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, **in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.[40]

THE IMPORTATIONS WERE ABANDONED IN FAVOR OF THE GOVERNMENT

The law is clear and explicit. It gives a non-extendible period of 30 days for the importer to file the entry which we have already ruled pertains to **both** the IED and IEIRD. Thus under Section 1801 in relation to Section 1301, when the importer fails to file the entry within the said period, he "shall be deemed to have renounced all his interests and property rights" to the importations and these shall be considered impliedly abandoned in favor of the government:

Section 1801. Abandonment, Kinds and Effect of. —

x x x x x x x x x

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph **shall be deemed to have renounced all his interests and property rights therein**.

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[39] *Caltex (Philippines), Inc. v. CA*, G.R. No. 104781, 10 July 1998, 292 SCRA 273, 284-285.

[40] Before it was amended by RA 9135 (An Act Amending Certain Provisions of PD 1464, Otherwise Known as the TCC of The Philippines, as Amended, and for Other Purposes [2001]).

According to petitioner, the shipments should not be considered impliedly abandoned because none of its overt acts (filing of the IEDs and paying advance duties) revealed any intention to abandon the importations.[41]

Unfortunately for petitioner, it was the law itself which considered the importation abandoned when it failed to file the IEIRDs within the allotted time. Before it was amended, Section 1801 was worded as follows:

Sec. 1801. Abandonment, Kinds and Effect of. — **Abandonment** is express when it is made direct to the Collector by the interested party in writing and it is **implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred.** The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.

Any person who abandons an imported article renounces all his interests and property rights therein.[42]

After it was amended by RA 7651, there was an indubitable shift in language as to what could be considered implied abandonment:

Section 1801. Abandonment, Kinds and Effect of. — An imported article is **deemed abandoned** under any of the following circumstances:

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or

b. When the owner, importer, consignee or interested party after due notice, **fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel** or aircraft xxx

[41] *Rollo*, p. 40.

[42] RA 1937 entitled "An Act to Revise and Codify the Tariff and Customs Laws of the Philippines" (Approved on June 22, 1957).

From the wording of the amendment, RA 7651 no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the intention to abandon) but opted to omit them.[43] It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.

NOTICE WAS NOT NECESSARY UNDER THE CIRCUMSTANCES OF THIS CASE

Petitioner also avers that the importations could not be deemed impliedly abandoned because respondent did not give it any notice as required by Section 1801 of the TCC:

Sec. 1801. Abandonment, Kinds and Effect of. — An imported article is deemed abandoned under any of the following circumstances:

x x x x x x x x x

b. When the owner, importer, consignee or interested party **after due notice,** fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft xxx (Emphasis supplied)

Furthermore, it claims that notice and abandonment proceedings were required under the BOC's guidelines on abandonment (CMO 15-94):

SUBJECT: REVISED GUIDELINES ON ABANDONMENT

x x x x x x x x x

B. ADMINISTRATIVE PROVISIONS

x x x x x x x x x

B.2 Implied abandonment occurs when:

[43] See *Parras v. Land Registration Commission*, 108 Phil. 1142, 1146 (1960) and *Phil. Packing Corp. v. Coll. of Internal Rev.*, 100 Phil. 545, 553 (1956).

B.2.1 The owner, importer, consignee, interested party or his authorized broker/representative, after due notice, fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of last package from the carrying vessel or aircraft.

x x x x x x x x x

Due notice to the consignee/importer/owner/interested party shall be by means of posting of a notice to file entry at the Bulletin Board seven (7) days prior to the lapse of the thirty (30) day period by the Entry Processing Division listing the consignees who/which have not filed the required import entries as of the date of the posting of the notice **and notifying them of the arrival of their shipment**, the name of the carrying vessel/aircraft, Voy. No. Reg. No. and the respective B/L No./AWB No., with a warning, as shown by the attached form, entitled: "URGENT NOTICE TO FILE ENTRY" which is attached hereto as Annex A and made an integral part of this Order.

x x x x x x x x x

C. OPERATIONAL PROVISIONS

x x x x x x x x x

C.2 On Implied Abandonment:

C.2.1 When no entry is filed

C.2.1.1 **Within twenty-four (24) hours after the completion of the boarding formalities**, the Boarding Inspector must submit the **manifests** to the Bay Service or similar office so that the Entry Processing Division copy may be put to use by said office as soon as possible.

C..2.1.2 **Within twenty-four (24) hours after the completion of the unloading of the vessel/ aircraft**, the Inspector assigned in the vessel/aircraft, shall issue a **certification** addressed to the Collector of Customs

(Attention: Chief, Entry Processing Division), copy furnished Chief, Data Monitoring Unit, specifically stating the time and date of discharge of the last package from the vessel/aircraft assigned to him. Said certificate must be encoded by Data Monitoring Unit in the Manifest Clearance System.

C.2.1.3 **Twenty-three (23) days after the discharge of the last package** from the carrying vessel/aircraft, the Chief, Data Monitoring Unit shall cause the printing of the **URGENT NOTICE TO FILE ENTRY** in accordance with the attached form, Annex A hereof, sign the URGENT NOTICE and **cause its posting continuously for seven (7) days at the Bulletin Board for the purpose until the lapse of the thirty (30) day period.**

C.2.1.4 The Chief, Data Monitoring Unit, shall **submit a weekly report** to the Collector of Customs with a listing by vessel, Registry Number of shipments/ importations which shall be deemed abandoned for failure to file entry within the prescribed period and **with certification** that per records available, the thirty (30) day period within which to file the entry therefore has lapsed without the consignee/importer filing the entry and that the

proper posting of notice as required has been complied with.

x x x x x x x x x

C.2.1.5 Upon receipt of the report, the Collector of Customs shall issue an **order** to the Chief, Auction and Cargo Disposal Division, **to dispose of the shipment** enumerated in the report prepared by the Chief, Data Monitoring Unit on the ground that those are abandoned and *ipso facto* deemed the property of the Government to be disposed of as provided by law.

x x x x x x x x x[44] (Emphasis supplied)

We disagree.

Under the peculiar facts and circumstances of this case, due notice was not necessary. The shipments arrived in 1996. The IEDs and IEIRDs were also filed in 1996. However, respondent discovered the fraud which attended the importations and their subsequent release from the BOC's custody only in 1999. Obviously, the situation here was not an ordinary case of abandonment wherein the importer merely decided not to claim its importations. Fraud was established against petitioner; it colluded with the former District Collector. Because of this, the scheme was concealed from respondent. The government was unable to protect itself until the plot was uncovered. The government cannot be crippled by the malfeasance of its officials and employees. Consequently, it was impossible for respondent to comply with the requirements under the rules.

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[44] Dated April 29, 1994; *rollo*, pp. 49-51.

By the time respondent learned of the anomaly, the entries had already been belatedly filed and the oil importations released and presumably used or sold. It was a *fait accompli*. Under such circumstances, it would have been against all logic to require respondent to still post an "urgent notice to file entry" before declaring the shipments abandoned.

The minutes of the deliberations in the House of Representatives Committee on Ways and Means on the proposed amendment to Section 1801 of the TCC show that the phrase "after due notice" was intended for owners, consignees, importers of the shipments who live in rural areas or distant places far from the port where the shipments are discharged, who are unfamiliar with customs procedures and need the help and advice of people on how to file an entry:

x x x x x x x x x

MR. FERIA. 1801, your Honor. The question that was raised here in the last hearing was whether notice is required to be sent to the importer. And, it has been brought forward that we can dispense with the notice to the importer because the shipping companies are notifying the importers on the arrival of their shipment. And, so that **notice** is sufficient to . . . sufficient for the claimant or importer **to know that the shipments have already arrived**.

Second, your Honor, the legitimate businessmen always have . . . they have their agents with the shipping companies, and so they should know the arrival of their shipment.

x x x x x x x x x

HON. QUIMPO. Okay. Comparing the two, Mr. Chairman, I cannot help but notice that in the substitution now there is a failure to provide the phrase AFTER NOTICE THEREOF IS GIVEN TO THE INTERESTED PARTY, which was in the original. Now in the second, in the substitution, it has been deleted. I was first wondering whether this would be necessary in order to provide for due process. I'm thinking of certain cases, Mr. Chairman, where the **owner might not have known**. This is now on implied abandonment not the express abandonment.

x x x x x x x x x

HON. QUIMPO. Because I'm thinking, Mr. Chairman. I'm thinking of certain situations where the importer even though, you know, in the normal course of business sometimes **they fail to keep up the date or something to that effect**.

THE CHAIRMAN. Sometimes their cargoes get lost.

HON. QUIMPO. So just to, you know . . . anyway, this is only a **notice to be sent to them that they have a cargo there**.

x x x x x x x x x

MR. PARAYNO. Your Honor, I think as a general rule, five days [extendible] to another five days is a good enough period of time. **But we cannot discount that there are some consignees of shipments located in rural areas or distant from urban centers where the ports are located to come to the [BOC] and to ask for help particularly if a ship consignment is made to an individual who is uninitiated with customs procedures. He will probably have the problem of coming over to the urban centers, seek the advice of people on how to file entry. And therefore, the five day extendible to another five days might really be a tight period for some. But the majority of our importers are knowledgeable of procedures.** And in fact, it is in their interest to file the entry even before the arrival of the shipment. That's why we have a procedure in the bureau whereby importers can file their entries even before the shipment arrives in the country.[45] (Emphasis supplied)

x x x x x x x x x

Petitioner, a regular, large-scale and multinational importer of oil and oil products, fell under the category of a knowledgeable importer which was familiar with the governing rules and procedures in the release of importations.

Furthermore, notice to petitioner was unnecessary because it was fully aware that its shipments had in fact arrived in the Port of Batangas. The oil shipments were discharged from the carriers docked in its private pier or wharf, into its shore tanks. From then on, petitioner had actual physical possession of its oil importations. It was thus incumbent upon it to know its

[45] October 21, 1992, pp. II-1 to II-4, III-2.

obligation to file the IEIRD within the 30-day period prescribed by law. As a matter of fact, importers such as petitioner can, under existing rules and regulations, file in advance an import entry even before the arrival of the shipment to expedite the release of the same. However, it deliberately chose not to comply with its obligation under Section 1301.

The purpose of posting an "urgent notice to file entry" pursuant to Section B.2.1 of CMO 15-94 is only to notify the importer of the "arrival of its shipment" and the details of said shipment. Since it already had knowledge of such, notice was superfluous. Besides, the entries had already been filed, albeit belatedly. It would have been oppressive to the government to demand a literal implementation of this notice requirement.

AN ABANDONED ARTICLE SHALL *IPSO FACTO* BE DEEMED THE PROPERTY OF THE GOVERNMENT

Section 1802 of the TCC provides:

> Sec. 1802. Abandonment of Imported Articles. — **An abandoned article shall *ipso facto* be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code. (Emphasis supplied)

The term "*ipso facto*" is defined as "by the very act itself" or "by mere act." Probably a closer translation of the Latin term would be "by the fact itself."[46] Thus, there was no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government. Ownership over the abandoned importation was transferred to the government by operation of law under Section 1802 of the TCC, as amended by RA 7651.

A historical review of the pertinent provisions of the TCC dispels any view that is contrary to the automatic transfer of ownership of the abandoned articles to the government by the

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[46] Words and Phrases, Permanent Edition, Volume 22A (1958), p. 446.

mere fact of an importer's failure to file the required entries within the mandated period.

Under the former Administrative Code, Act 2711,[47] Section 1323 of Article XV thereof provides:

Sec. 1323. When implied abandonment takes effect — Notice — An implied abandonment shall not take effect until after the property shall be declared by the collector to have been abandoned and notice to the party in interest as in seizure cases.

Thereafter, RA 1937[48] was enacted. Section 1801 thereof provides:

Sec. 1801. Abandonment, Kinds and Effect of. — Abandonment is express when it is made direct to the Collector by the interested party in writing and it is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred. The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.

Any person who abandons an imported article renounces all his interests and property rights therein.

PD 1464[49] did not amend the provisions of the TCC on abandonment. The latest amendment was introduced by Section 1802 of RA 7651 which provides:

Sec. 1802. Abandonment of Imported Articles. — An abandoned article shall *ipso facto* be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.

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[47] An Act Amending the Administrative Code (March 10, 1917).

[48] *Supra* note 42.

[49] A Decree to Consolidate and Codify All Tariff and Customs Laws of the Philippines (Approved on June 11, 1978).

The amendatory law, RA 7651, deleted the requirement that there must be a declaration by the Collector of Customs that the goods have been abandoned by the importers and that the latter shall be given notice of said declaration before any abandonment of the articles becomes effective.

No doubt, by using the term "*ipso facto*" in Section 1802 as amended by RA 7651, the legislature removed the need for abandonment proceedings and for a declaration that the imported articles have been abandoned before ownership thereof can be transferred to the government.[50]

Petitioner claims it is arbitrary, harsh and confiscatory to deprive importers of their property rights just because of their failure to timely file the IEIRD. In effect, petitioner is challenging the constitutionality of Sections 1801 and 1802 by contending that said provisions are violative of substantive and procedural due process. We disallow this collateral attack on a presumably valid law:

> We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[51]

Besides,

> [a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. xxx The settled rule is that courts will not anticipate

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[50] In the Sponsorship Speech of Senator Herrera, he stated:

"Specifically, [Senate Bill No. 451] seeks to speed up the movement of the imported goods by clarifying when imported articles are being abandoned…." (March 29, p. 20.)

[51] *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, 15 December 2005, 478 SCRA 115, 123-124, citing *Olsen and Co., v. Aldanese*, 43 Phil. 259 (1922); *San Miguel Brewery v. Magno*, 128 Phil. 328 (1967).

a question of constitutional law in advance of the necessity of deciding it.[52]

Be that as it may, the intent of Congress was unequivocal. Our policy makers wanted to do away with lengthy proceedings before an importation can be considered abandoned:

x x x x x x x x x

MR. PARAYNO. Thank you, Mr. Chairman. The proposed amendment to Section 1801 on the abandonment, kinds and effects. This aimed to facilitate, Mr. Chairman, the process by which this activity is being acted upon at the moment. The intention, Mr. Chairman, is for the Customs Administration to be able to maximize the revenue that can be derived from abandoned goods, and the problem that we are encountering at the moment is that we have to go through a lengthy process similar to a seizure proceedings to be able to finally declare the cargo, the abandoned cargo forfeited in favor of the government and therefore, may be disposed of pursuant to law. And that therefore, **the proposed amendment particularly on the implied abandonment as framed here will do away with the lengthy process of seizure proceedings** and therefore, enable us to dispose of the shipments through public auction and other modes of disposal as early as possible.

THE CHAIRMAN. In other words, Commissioner, **there'll be no need for a seizure in the case of abandonment because under the proposed bill it's considered to be government property**.[53]

x x x x x x x x x

CONCLUSION

Petitioner's failure to file the required entries within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil importations. This means that from the precise moment that the non-extendible thirty-day period lapsed,

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[52] *Philippine National Bank v. Palma*, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 323, citations omitted.

[53] Minutes of the Deliberations in the House of Representatives Committee on Ways and Means, October 21, 1992, pp. I-2 to I-3.

the abandoned shipments were deemed (that is, they became) the property of the government. Therefore, when petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government. Accordingly, it became liable for the total dutiable value of the shipments of imported crude oil amounting to ₱1,210,280,789.21 reduced by the total amount of duties paid amounting to ₱316,499,021.00 thereby leaving a balance of ₱893,781,768.21.

By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. There is no such showing here.

WHEREFORE, the petition is hereby *DENIED*. Petitioner Chevron Philippines, Inc. is *ORDERED* to pay the amount of EIGHT HUNDRED NINETY THREE MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND SEVEN HUNDRED SIXTY EIGHT PESOS AND TWENTY-ONE CENTAVOS (₱893,781,768.21) plus six percent (6%) legal interest *per annum* accruing from the date of promulgation of this decision until its finality. Upon finality of this decision, the sum so awarded shall bear interest at the rate of twelve percent (12%) *per annum* until its full satisfaction.

Costs against petitioner.

SO ORDERED.

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

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[*] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

EN BANC

[A.M. No. P-06-2182. August 12, 2008]

ALFREDO L. CAMUS, JR., *complainant, vs.* **REYNALDO L. ALEGRE, Clerk of Court, Municipal Trial Court, Paniqui, Tarlac,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; NATURE OF ADMINISTRATIVE CASES; CONSTRUED. — The issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employee against whom the complaint is filed, has breached the norms and standards of service in the judiciary. Clearly, this court has the power and the duty to root out misconduct among its employees, regardless of the complainant's desistance.

2. ID.; ID.; COURT PERSONNEL; CLERK OF COURT; NOT ALLOWED TO ACT AS COUNSEL FOR THE ACCUSED; VIOLATION IN CASE AT BAR. — As a Clerk of Court, it is not respondent's function, or any of "his staff," to prepare the documents for the accused's application for probation. Respondent is a court employee hence he is not allowed to act as the accused's counsel. The initiative to apply for probation should have come from the accused, who was assisted by his counsel, Atty. Perez. Thus, it was incumbent upon the latter to file accused's application for probation. Moreover, respondent did not deny receipt of the envelope containing marked money from the Sps. Mamaba. However, he justifies that: x x x This Court is inclined to give more credence to the narration of SPO3 Bobby A. Madamba, SPO1 James D. Lacamento and PO3 Romeo S. Parchamento in their Affidavit of Arrest, to wit: x x x That further investigations resulted to the confiscation of the marked money from the drawer of the suspect in the presence of Judge Gregorio Rosete, Municipal Trial Court Judge and Mayor Elpidio Ibarra, Municipal Mayor of Paniqui, Tarlac. Respondent could have presented Judge Rosete and Mayor Ibarra in order to disprove the arresting officers' allegation that they confiscated the envelope from respondent's drawer, but he did not. He could have presented also the Sps. Mamaba, particularly Darmie Mamaba, who

according to respondent was the one who placed the envelope inside the drawer, but he did not. Finally, respondent could have presented a co-employee who would corroborate his version, but again he failed. Thus, we accord more weight to the narration of the police officers contained in their Affidavit of Arrest *vis-à-vis* the self-serving, uncorroborated and bare denial of the respondent. Absent strong and convincing proof to the contrary, this Court is bound by the presumption that the arresting officers were aware of the legal mandates in effecting arrest and strictly complied with the same.

3. **ID.; ID.; ID.; ID.; MISCONDUCT; DEFINED AND CONSTRUED. —** [W]e held in *Rodriguez v. Eugenio*: Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused." Respondent's act of demanding and receiving money from the uncle of a party litigant constitutes grave misconduct in office. It is this kind of gross and flaunting misconduct, no matter how nominal the amount involved on the part of those who are charged with the responsibility of administering the law and rendering justice quickly, which erodes the respect for law and the courts.

4. **ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; PENALTY. —** Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct, being in the nature of grave offenses, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from re-employment in government service. In addition, respondent's solicitation of money from complainant in exchange for a favorable decision violates Canon I of the Code of Conduct for Court Personnel which took effect on 1 June 2004 pursuant to A.M. No. 03-06-13-SC. Sections 1

and 2, Canon 1 of the Code of Conduct for Court Personnel expressly provide: "SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges, or exemption for themselves or for others. SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit on any explicit or implicit understanding that such gift shall influence their official functions."

APPEARANCES OF COUNSEL

Marcelito M. Millo for respondent.

D E C I S I O N

***PER CURIAM*:**

On July 7, 2005, the Office of the Court Administrator (OCA) received a letter[1] from Alfredo L. Camus, Jr. requesting an investigation of Direct Bribery filed against Reynaldo L. Alegre, Clerk of Court, Municipal Trial Court, Paniqui, Tarlac. Camus attached to said letter the following documents:

1) Information dated 20 May 2005 filed by Atty. Aladin C. Bermudez, Jr., Acting Provincial Prosecutor;

2) Affidavit of Laureano Mamaba *y* Salvador and Darmie Castillo-Mamaba of Barangay Mabilang, Paniqui, Tarlac;

3) Affidavit of arrest executed by SPO3 Bobby A. Madamba, PNP; SPO1 James D. Lacamento, PNP; PO3 Romeo S. Parchamento, PNP and PO2 Jeffrey Ibanes, PNP, all members of the Paniqui Police Station, Paniqui, Tarlac; and

4) Release Order of accused Reynaldo L. Alegre dated 20 May 2005 issued by Judge Cesar M. Sotero of the RTC, Branch 67, Paniqui, Tarlac.

The OCA requested from Judge Cesar M. Sotero of the Regional Trial Court of Paniqui, Tarlac, Branch 67, certified true copies of said documents, and found that:

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[1] *Rollo*, p. 1.

1. The son of Sps. Laureano Mamaba and Darmie Mamaba has a pending criminal case for Reckless Imprudence Resulting to Serious Physical Injury and Damage to Property at the Municipal Trial Court of Paniqui, Tarlac. A warrant of arrest was issued by the court and the son was subsequently arrested and detained by the PNP, Paniqui, Tarlac.

2. Sps. Mamaba coordinated with respondent Clerk of Court Reynaldo L. Alegre for the release of their son.

3. On 19 May 2005, at 8:30 in the morning, Sps. Mamaba met with respondent who demanded ₱3,000.00 in exchange for the release order. However, the spouses had with them only ₱1,000.00 which respondent accepted with the condition that the spouses should raise the remaining ₱2,000.00.

4. Sps. Mamaba coordinated right away with the PNP of Paniqui, Tarlac and an entrapment operation was undertaken the afternoon of the same day.

5. Respondent was arrested by the PNP right after he received from the Sps. Mamaba the envelope containing marked money in the amount of ₱1,000.00. Later, the marked money was recovered from the drawer of respondent, in the presence of Judge Gregorio Rosete and Mayor Elpidio Ibarra.

6. On 20 May 2005, a Release Order was issued by Judge Cesar M. Sotero of RTC, Branch 67, Paniqui, Tarlac, the respondent having posted a cash bond in the amount of ₱20,000.00 on the same date.

On June 21, 2006, respondent was directed to file comment. He was likewise placed under preventive suspension "pending the final outcome of the criminal case against him."[2]

In his Comment,[3] respondent alleged that the Sps. Mamaba executed an Affidavit of Desistance hence the Information for Direct Bribery filed against him was ordered dismissed; that he did not demand money from the Sps. Mamaba but that out of gratitude for the release of their son, the Sps. Mamaba gave

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[2] *Id.* at 15.

[3] *Id.* at 20-23.

him an envelope containing some amount for the "snacks" of the court personnel; that he refused to accept the envelope but Darmie Mamaba placed the same inside one of his open drawers; that there was no truth to the narration of the arresting police officers on how he was apprehended; that he immediately informed the police officers about the contents of the envelope which showed his innocence of the charge filed against him.

On October 12, 2006, respondent filed a Motion to Dismiss the instant case in view of the dismissal of the charge for direct bribery.[4]

On January 15, 2007, this Court referred the matter to Narciso T. Atienza, a Consultant of the OCA for evaluation, report and recommendation.[5] The case was set for hearing three times but Camus failed to appear hence, respondent moved for its dismissal.

Instead of dismissing the case, the Consultant recommended that the investigation be referred to the Executive Judge of the Regional Trial Court of Tarlac, based on the Evaluation[6] that:

> Prosecutor Bermudez erred in issuing a resolution dismissing the complaint filed against accused Reynaldo Alegre based on the alleged affidavit of desistance executed by private complainants Laureano and Darmie Mamaba. The Office of the Provincial Prosecutor of Tarlac had already lost jurisdiction of the case after the information was filed in court. Since the court had directed Prosecutor Bermudez to conduct the requisite preliminary investigation pursuant to Section 7, Rule 112 of the Rules of Court, it is his duty to submit to the court a report on the result of the preliminary investigation. He may file a motion to withdraw or dismiss information if evidence adduced during the preliminary investigation so warrants. Only the court can order the dismissal of the information since it has already acquired jurisdiction over the case and the person of the accused after the latter had posted a bond for his provisional liberty.

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

[5] *Id.* at 41.

[6] *Id.* at 53-60.

On the other hand, the presiding [judge] RTC, Branch 67, Paniqui, Tarlac also erred when he ordered the dismissal of the information for Direct Bribery (Criminal Case No. 2371-05) against accused Reynaldo Alegre on the basis of the motion filed by counsel for the accused without the conformity/approval of the Prosecutor. All criminal prosecutions, either commenced by a complaint or information, shall be prosecuted under the direction and control of the public prosecutor. Prosecution of offenses is a matter of public interest and it is the duty of the government to prosecute cases until its termination. Direct bribery is a crime against the state or a public offense which cannot be dismissed based on the affidavit of desistance executed by the private complainants.

x x x x x x x x x

The dismissal of the criminal information filed against herein respondent in RTC, Branch 67, Paniqui, Tarlac, did not render the instant administrative case moot and academic. The Court retains jurisdiction over the case either to pronounce respondent innocent of the charge or declare him guilty thereof. Administrative investigation is different from criminal prosecution and the dismissal of the latter is not a bar to the former.

x x x x x x x x x[7]

Thus, on June 13, 2007, the Court resolved to direct the Executive Judge of the Regional Trial Court of Paniqui, Tarlac, to conduct a formal investigation of the case,[8] to wit:

Upon recommendation of Hon. Atienza, the Court resolves to *DIRECT* the Executive Judge of the RTC, Paniqui, Tarlac, to conduct a formal investigation of the case and submit his report and **recommendation** thereon within ninety (90) days from receipt of the records. (Emphasis supplied)

The Resolution was followed by a letter dated July 9, 2007, of then Deputy Court Administrator Jose P. Perez directing Judge Liberty O. Castañeda, thus:

The investigation should be private and confidential and should be completed within the period stated in the Resolution computed

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

[8] *Id.* at 105.

from the receipt hereof. A report containing the findings of facts, the conclusions of law and your **recommendation**, in at least five (5) legible copies, together with the complete records of the case, the evidence adduced by the parties, and the transcript of the stenographic notes taken, must be submitted to the **Court** immediately for **final action**. (Emphasis supplied)

However, in an Order[9] dated August 14, 2007, Judge Liberty O. Castañeda ruled, thus:

ORDER

In today's hearing, only the respondent Reynaldo L. Alegre appeared. The complainant, Mr. Alfredo Camus, Jr. for the third time, did not appear despite due notice for the last three (3) hearings.

As prayed for by the respondent, for the apparent lack of interest of Alfredo Camus, Jr., this case is hereby DISMISSED.

x x x x x x x x x

In its Memorandum of April 14, 2008, the OCA noted that Investigating Judge Castañeda erred in ordering the dismissal of the complaint due to the alleged lack of interest on the part of complainant Camus. The OCA observed that Camus filed the instant administrative complaint as a taxpayer and concerned citizen; and that he was not privy to the alleged misconduct of respondent Alegre. Thus, according to the OCA, the Investigating Judge should have summoned not only Camus, but also the Sps. Mamaba, in order to ferret out the truth.

The OCA also observed that despite the failure of Camus to appear during the hearing, respondent Alegre is not entirely without liability. The OCA opined that Alegre could be held liable for Conduct Prejudicial to the Best Interest of the Service because although it was not established that he demanded money from the Sps. Mamaba, the envelope containing ₱1,000.00 intended for the snacks of the court personnel was found inside his drawer.

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[9] *Id.* at 107.

The OCA[10] recommended, thus:

(1) That Reynaldo L. Alegre, Clerk of Court, MTC, Paniqui, Tarlac, be found GUILTY of Conduct Prejudicial to the Best Interest of the Service.

(2) That the period of one-and-a-half years (1 ½) Clerk of Court Alegre has served while under preventive suspension be CONSIDERED AS SUFFICIENT SERVICE OF THE PENALTY for the offense;

(3) That the preventive suspension of Clerk of Court Alegre be immediately LIFTED; and

(4) That Clerk of Court Alegre be STERNLY WARNED that a repetition of the same act or a similar infraction in the future shall be dealt with more severely by the Court.

At the outset, we do not agree with the order of Investigating Judge Castañeda dismissing the instant case based on the alleged lack of interest on the part of complainant Camus. It will be recalled that in the Court's Resolution of June 13, 2007, the Investigating Judge was given recommendatory powers only, to wit:

> Upon recommendation of Hon. Atienza, the Court resolves to *DIRECT* the Executive Judge of the RTC, Paniqui, Tarlac, to conduct a formal investigation of the case and submit his report and **recommendation** thereon within ninety (90) days from receipt of the records.

Likewise, in the letter of then Deputy Court Administrator Perez dated July 9, 2007, the Investigating Judge was expressly directed to submit a *report* with *recommendation*, because the *final action* rests with this Court. Judge Castañeda is therefore reminded to strictly follow the directives of this Court.

Judge Castañeda was given a period of 90 days from receipt of the records to submit a report and recommendation. Assuming that she received the records *on the same day* it was transmitted

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[10] Through Court Administrator Zenaida N. Elepaño and Deputy Court Administrator Antonio H. Dujua.

by the Court on July 9, 2007, the last day to submit a report with recommendation was on October 7, 2007. However, as early as August 14, 2007, and only after three settings during which complainant Camus failed to appear thrice, Judge Castañeda issued an Order dismissing the case.

It must be emphasized that "(a)dministrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties."[11]

In the instant case, there was no express or categorical desistance on the part of Camus. However, it appearing that Camus was not privy to the circumstances which led to the filing of the Information for direct bribery against respondent, Judge Castañeda should have summoned the Sps. Mamaba, the police officers, the Municipal Trial Court Judge, the Municipal Mayor, or any of the court personnel of the Municipal Trial Court of Paniqui, Tarlac, who allegedly saw respondent receiving the marked money, in order to properly conduct the investigation as directed by this Court. However, she dismissed the case after complainant Camus failed to appear thrice, without exercising its coercive powers to compel the presence of Camus in court.

The issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employee against whom the complaint is filed, has breached the norms and standards of service in the judiciary. Clearly,

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[11] *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216, April 20, 2007, 521 SCRA 489, 501.

this court has the power and the duty to root out misconduct among its employees, regardless of the complainant's desistance.[12]

Based on the supporting documents presented by the complainant which respondent failed to rebut, and on the latter's admissions, we find that respondent is guilty of grave misconduct.

In his Comment, respondent alleged that:

> Upon being arraigned on May 17, 2005 — assisted by the PAO — Atty. Bienvenido Perez — accused pleaded guilty and was sentenced to an imprisonment of one (1) year and to pay the aggrieved party the sum of PhP30,800.00. Since the accused remained in detention, Jhomon's parents, Laureano and Darmie Mamaba, pleaded to the respondent to assist them in causing the immediate release of their son, hence, out of pity and for humanitarian assistance, and the fact that he is also a former member of the religious sect of the said spouses (INC), and that his staff then were not busy, respondent instructed one of his staff to prepare all the documents in connection with Jhomon's Application for Probation.[13]

As a Clerk of Court, it is not respondent's function, or any of "his staff," to prepare the documents for the accused's application for probation. Respondent is a court employee hence he is not allowed to act as the accused's counsel. The initiative to apply for probation should have come from the accused, who was assisted by his counsel, Atty. Perez. Thus, it was incumbent upon the latter to file accused's application for probation.

Moreover, respondent did not deny receipt of the envelope containing marked money from the Sps. Mamaba. However, he justifies that:

> Maybe, out of gratitude for the assistance extended to them that led to the release of Jhomon, Laureano and Darmie Mamaba handed to respondent a small envelope and told him that the same was just for "snack" (*pang meryenda nyo*) with the court personnel; Respondent refused to accept said envelope but the same was placed by Darmie

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[12] *Id.*

[13] *Rollo*, p. 21.

Mamaba in one of the drawers of respondent's office tables — which happened to be open at the time and just beside where Darmie was standing. After the spouses left the office — and before respondent could verify the contents of the said envelope — said policemen arrived and suddenly frisked and search the person of the respondent and when they found nothing on him, they searched his drawers and retrieved thereat said envelope containing Php1,000.00.[14]

We are not persuaded; respondent's narration does not inspire belief. Accepting money from party litigants is a grave misconduct. This Court is inclined to give more credence to the narration of SPO3 Bobby A. Madamba, SPO1 James D. Lacamento and PO3 Romeo S. Parchamento in their Affidavit of Arrest,[15] to wit:

x x x x x x x x x

That further investigations resulted to the confiscation of the marked money from the drawer of the suspect in the presence of Judge Gregorio Rosete, Municipal Trial Court Judge and Mayor Elpidio Ibarra, Municipal Mayor of Paniqui, Tarlac.

Respondent could have presented Judge Rosete and Mayor Ibarra in order to disprove the arresting officers' allegation that they confiscated the envelope from respondent's drawer, but he did not. He could have presented also the Sps. Mamaba, particularly Darmie Mamaba, who according to respondent was the one who placed the envelope inside the drawer, but he did not. Finally, respondent could have presented a co-employee who would corroborate his version, but again he failed. Thus, we accord more weight to the narration of the police officers contained in their Affidavit of Arrest *vis-à-vis* the self-serving, uncorroborated and bare denial of the respondent. Absent strong and convincing proof to the contrary, this Court is bound by the presumption that the arresting officers were aware of the legal mandates in effecting arrest and strictly complied with the same.[16]

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[14] *Id.* at 22.

[15] *Id.* at 10.

[16] *Rodriguez v. Eugenio*, *supra* note 11 at 497.

Finally, we held in *Rodriguez v. Eugenio*:

Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."

Respondent's act of demanding and receiving money from the uncle of a party litigant constitutes grave misconduct in office. It is this kind of gross and flaunting misconduct, no matter how nominal the amount involved on the part of those who are charged with the responsibility of administering the law and rendering justice quickly, which erodes the respect for law and the courts.

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

In addition, respondent's solicitation of money from complainant in exchange for a favorable decision violates Canon I of the Code of Conduct for Court Personnel which took effect on 1 June 2004 pursuant to A.M. No. 03-06-13-SC. Sections 1 and 2, Canon 1 of the Code of Conduct for Court Personnel expressly provide:

> "SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges, or exemption for themselves or for others.
>
> SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit on any explicit or implicit understanding that such gift shall influence their official functions."[17]

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[17] *Id.* at 505-507.

WHEREFORE, respondent Reynaldo L. Alegre, Clerk of Court of the Municipal Trial Court of Paniqui, Tarlac, is found *GUILTY* of *GRAVE MISCONDUCT*. He is *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality in the government, 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, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

EN BANC

[A.M. No. P-08-2506. August 12, 2008]

MANUEL CALUMBA, *complainant, vs.* **BOBBY T. YAP, Utility Worker, Municipal Trial Court, Guihulngan, Negros Oriental,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FALSIFICATION OF OFFICIAL DOCUMENTS ARE CONSIDERED GRAVE OFFENSES PUNISHABLE BY DISMISSAL; PRESENT IN CASE AT BAR. — Persons involved in the administration of justice, from the highest official to the lowest clerk, must live up to the strictest standards of honesty and integrity in the public service, especially since the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the personnel who work thereat. In the instant case, respondent was charged with two counts of theft — of which he was

convicted and sentenced to suffer 25 days of imprisonment. We do not find merit in respondent's explanation that the charges were filed way back in 1965 when he was only 18 years of age. Mere passage of time does not erase or justify past infractions; neither does it serve as a license not to disclose them in official documents as required by law. He obtained gainful employment in the Judiciary under false pretenses and misrepresentation. Under Section 52 (A)(1) and A(6), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty and falsification of official document are considered grave offenses punishable by dismissal from the service.

D E C I S I O N

***PER CURIAM*:**

On December 8, 2005, the Office of the Court Administrator (OCA) received a letter-complaint from Manuel C. Malumba charging Bobby Tiongco Yap, Utility Worker I in the Municipal Trial Court of Guihulngan, Negros Oriental, with Conduct Unbecoming a Court Personnel and Dishonesty. Malumba claimed that Yap had been previously charged with two counts of theft. Yap was allegedly found guilty as charged in Criminal Case No. 1492 while the Information in Criminal Case No. 1466 was dismissed.

Upon query from Judge Romeo L. Anasario of the 2nd Municipal Circuit Trial Court (Manjuyod-Bindoy-Ayungon), Bindoy, Negros Oriental, records showed that on August 25, 1965, respondent Yap was found guilty of theft of a fighting cock in Criminal Case No. 1492 and sentenced to suffer a penalty of 25 days imprisonment and to pay half of the cost.

In his Comment, Yap alleged that SPO4 Manuel Calumba filed the instant complaint in retaliation to the charges of Grave Threats and Illegal Discharge of Firearm that he filed against the latter before the Provincial Prosecution Office of Negros Oriental, and an administrative case before the Provincial Internal Affairs Service (PIAS) of the Philippine National Police in Negros Oriental.

He claimed that the complaints for theft against him were filed in 1965 when he was 18 years old; that he thought that both charges against him were dismissed; and that it was only upon the filing of the instant administrative complaint that he learned that he was convicted in 1965 of stealing a fighting cock in Criminal Case No. 1492. He alleged that he finished only 2nd year high school; and that he joined the Judiciary in 1986.

Respondent's Personal Data Sheet showed that he stated that he had never been convicted for violation of any law, decree, ordinance or regulations by any court of tribunal.

In its Evaluation, the OCA noted that in making untruthful statements in his personal data sheet, respondent was liable for falsification and dishonesty. It was thus recommended that respondent be dismissed from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We adopt the findings and recommendation of the OCA.

Persons involved in the administration of justice, from the highest official to the lowest clerk, must live up to the strictest standards of honesty and integrity in the public service, especially since the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the personnel who work thereat.[1]

In the instant case, respondent was charged with two counts of theft – of which he was convicted and sentenced to suffer 25 days of imprisonment. We do not find merit in respondent's explanation that the charges were filed way back in 1965 when he was only 18 years of age. Mere passage of time does not erase or justify past infractions; neither does it serve as a license not to disclose them in official documents as required by law.

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[1] *Bellosillo v. Rivera*, A.M. No. P-00-1424, September 25, 2000, 341 SCRA 1, 10.

He obtained gainful employment in the Judiciary under false pretenses and misrepresentation.

Under Section 52 (A)(1) and A(6), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty and falsification of official document are considered grave offenses punishable by dismissal from the service.

WHEREFORE, based on the foregoing, respondent Bobby T. Yap, Utility Worker, Municipal Trial Court, Guihulngan, Negros Oriental, is found *GUILTY* of *DISHONESTY* and *FALSIFICATION OF OFFICIAL DOCUMENT*. He is *DISMISSED* from the service, with forfeiture of all retirement benefits, except for accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. This Decision is immediately executory.

SO ORDERED.

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

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