PHILIPPINE REPORTS

VOL. 584

AUGUST 13, 2008 TO AUGUST 20, 2008

VOLUME 584

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 13, 2008 TO AUGUST 20, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

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DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-05-2072. August 13, 2008]
(Formerly OCA IPI No. 04-1989-P)

ROMMEL N. MACASPAC, *complainant, vs.* **RICARDO C. FLORES, Process Server, Regional Trial Court, Branch 3, Balanga City, Bataan,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; MANNER OF SERVICE; EXPLAINED.— Notably, under Section 6, Rule 21 of the Revised Rules of Court, service of a subpoena shall be made in the same manner as personal or substituted service of summons. Pertinent sections of Rule 14, in effect, state: Sec. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. Sec. 7. *Substituted service.* – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. *Personal* service and *substituted* service are the two modes of serving a subpoena.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROCESS SERVER; WHEN THE MANNER BY WHICH HE SERVED THE COURT PROCESS DOES NOT SUFFICE TO COMPLY WITH THE REQUIREMENTS OF THE RULES; PRESENT IN CASE AT BAR.— In this case, after respondent's frustrated attempt to personally serve complainant a copy of the subpoena he acted no further. This he cannot deny since the certification itself only reflected: *"I have this 18th day of November 2003 not served of (sic) witness subpoena upon PO1 Rommel Macaspac on the ground that the said PO1 Rommel Macaspac is now [assigned] at WPD Station 2[,] Tondo, Manila according to SPO3 Antonio Capuli of the PNP, Orani, Bataan."* He did not attest in his report or aver in his Comment that, upon learning that personal service is not possible, he served the subpoena by leaving a copy thereof to some responsible person at complainant's dwelling place in Orani, Bataan or in the police station. Respondent actually had ample time to properly serve it thereafter because complainant was only required to appear as a witness on February 12, 2004, but respondent chose to be apathetic. The manner by which he served the court process clearly does not suffice to comply with the requirements of the Rules.

3. ID.; ID.; ID.; ID.; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; IMPOSABLE PENALTY. — As public servants, process servers like respondent must be constantly aware that they are bound by virtue of their office to exercise the prudence, caution and attention which careful men usually exercise in the management of their affairs. They should be fully cognizant of the nature and responsibilities of their tasks and their impact in giving flesh to the constitutional rights of the litigants to due process and speedy disposition of cases. In falling short of his mandate, respondent is guilty of simple neglect of duty, which signifies the failure of an employee to give attention to a task expected of him and a disregard of a duty resulting from carelessness or indifference. The term does not necessarily include willful neglect or intentional official wrongdoing. The OCA's recommended penalty of a fine in the amount of ₱3,000, however, does not correspond to the range of penalties provided for under Section 52 (B) (1), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, which took effect four days after the promulgation of the *Musni*

case. Under the prevailing Rules, simple neglect of duty is classified as a less grave offense which carries the penalty of suspension for one month and one day to six months for the first offense and dismissal for the second offense. Considering the adverse effect of respondent's negligence to the Republic's efforts to curb the proliferation of illegal drugs, he should be suspended for three months without pay.

APPEARANCES OF COUNSEL

Anthony Jay B. Consunji for respondent.

D E C I S I O N

AZCUNA, *J.*:

This administrative case arose from the Complaint[1] filed on August 20, 2004 with the Office of the Court Administrator (OCA) charging respondent, in his capacity as Process Server of Regional Trial Court (RTC), Branch 3, Balanga City, Bataan, with Serious Neglect of Duty relative to Criminal Case Nos. 9038 and 9039 entitled *"People of the Philippines v. Nova A. Catapang"* for violation of Republic Act No. 9165 (otherwise known as the[1] "Comprehensive Dangerous Drugs Act of 2002").

Complainant, who introduced himself as a Police Officer (PO) I assigned at the District Civil Disturbance Management Group (DCDMG) located at Western Police District (WPD) Headquarters, United Nations Avenue, Ermita, Manila, alleged: that he was previously assigned at PRO 3 Police Station in Orani, Bataan from August 30, 2002 to December 19, 2003; that on January 14, 2003, he apprehended Nova Catapang for violation of Sections 5 and 11, Article II of R.A. No. 9165; that an Information was filed, docketed as Criminal Case Nos. 9038 and 9039, and raffled to Balanga City RTC Br. 3; that knowing that he was bound to testify as the arresting officer, he waited for the notice of hearing to be sent but none came until his actual reassignment on December 19, 2003; that on

[1] *Rollo*, pp. 1-5.

July 22, 2004, he was shocked and surprised when it came to his knowledge that the criminal cases were dismissed by the court per Order dated June 30, 2004[2] stating, among others, that *"the prosecution of these cases went caput (sic) simply because of the failure of the purported arresting officer to appear at the scheduled hearings"*; that upon inquiry with RTC Br. 3, he was informed by a court personnel that respondent made a report on the return of the notice of hearing at the back page of the subpoena dated October 22, 2003 certifying that he has not served a copy of the subpoena to complainant on November 18, 2003 because *"the said PO1 Rommel Macaspac is now [assigned] at WPD Station 2[,] Tondo, Manila according to SPO3 Antonio Capuli of the PNP, Orani, Bataan"*; that respondent perjured in his report because complainant was at the time not assigned or transferred to another station, and in fact the latter was the desk officer-on-duty from November 17 to 19, 2003, in that same station where the subpoena was allegedly served; that the act of respondent, in making a report without further inquiry as to the truth thereof, is a grave neglect of his duties as a process server because it is detrimental to the prosecution of the case and the government's campaign against illegal drugs; and that the act of respondent against complainant's case is not an isolated incident as complainant found out through inquiries that most of the cases handled by the municipal police officers of Orani, Bataan were dismissed because of respondent's reports that a subpoena was served to a particular police officer but in truth and in fact it was never served or that respondent never tried to serve it by coming to the police station. Complainant prayed that a proper investigation of the matter be conducted before further damage would be caused by respondent.

In its Indorsement dated September 9, 2004,[3] the OCA directed respondent to file his Comment within ten days. On October 7, 2004, respondent requested for an extension of fifteen days – reckoned from October 9, 2004 – within which to file

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[2] *Id.* at 10-11.

[3] *Id.* at 17.

his pleading, which was granted.[4] However, it was only on January 18, 2005 that respondent filed his Comment dated December 2, 2004.[5]

Respondent countered that he should not be faulted for making a report that is candid and truthful. To him, he simply made a statement of fact, no more and no less. He asserted that the situation would have been different had complainant questioned the existence of a certain SPO3 Capuli, which he did not. Respondent stated that he could not have gone beyond the advice of SPO3 Capuli for the same was accorded truth only after complainant was found unavailable; that it was complainant who was first sought by respondent and it was only after he was nowhere to be found that respondent started to inquire from his colleagues. As to complainant's allegation that respondent was also negligent in other cases, respondent argued that such accusation deserves scant regard for want of specific evidence that would link him to the supposed acts.

In his Reply filed on January 27, 2005,[6] complainant reacted that respondent merely went through the process of serving a subpoena without exerting much effort to locate him. He suspected that respondent's service of the subpoena is tainted with irregularity, giving doubts as to his integrity. Complainant reiterated his plea that a full-blown hearing be conducted to prove respondent's negligence in the performance of his duty.

On August 4, 2005, the OCA found in its Report[7] that respondent is guilty for neglect of duty:

> It is clear from the records of the instant complaint that there was indeed an unjustified failure to serve the subpoena dated 22 October 2003 on the complainant. Respondent, in his comment, expressly admitted that he failed to serve the subpoena on complainant because the latter had been reassigned to the Tondo Police Station in Manila. This is not true for the fact is that the complainant was reassigned

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

[5] *Id.* at 20-27.

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

[7] *Id.* at 32-35.

to the NCRPO only on 11 December 2003. As of 18 November 2003 the complainant was still the desk officer at the Orani Municipal Police Station, Bataan.

Respondent's explanation that he was not able to serve the said subpoena as per advice of SPO3 Capuli is unmeritorious. As a Process Server imbued with a sense of dedication to duty he should have ascertained the veracity of the information given to him that complainant has been reassigned elsewhere. His alleged attempt to serve the subpoena was downright perfunctory.

By promptly acting the way he did without further verifying the false information given to him the respondent was guilty of neglect of duty which caused the dismissal of Criminal [Cases] Nos. 9038 and 9039 of the RTC, Branch 3, Balanga City.[8]

The OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that respondent, conformably with the ruling in *Musni v. Morales*,[9] be fined in the amount of ₱3,000, with a warning that a repetition of the same or similar act shall be dealt with more severely.

Per resolution dated September 12, 2005, this Court required respondent to manifest his agreement to submit the case for decision based on the pleadings filed, as to which he assented.

After perusing over the records of the case, this Court agrees with the OCA findings, except as to its recommended penalty.

As opposed to the self-serving and uncorroborated declaration of respondent, documentary evidence substantiates the claim that on November 18, 2003, the day respondent purportedly tried to serve a copy of the subpoena, complainant was actually still assigned as the desk officer at the PRO 3 Police Station in Orani, Bataan. It can, therefore, be deduced that either respondent deliberately made a false report as he, in fact, did not actually go to the police station or that he tried to serve the subpoena but no longer pursued it upon relying on the representation of SPO3 Capuli. Since fraud or malice cannot

[8] *Id.* at 34.

[9] 373 Phil. 703 (1999).

be ascribed in the absence of clear and convincing evidence to prove the same, the Court is inclined to regard the latter scenario as logical especially since complainant himself failed to disprove the identity of SPO3 Capuli or present his testimony to belie respondent's allegation of having talked to him.

Nevertheless, respondent cannot escape administrative liability, considering that he did not diligently exert his best effort to ascertain the true whereabouts of complainant. Evidently, he conveniently depended on just a lone informant, who later on was not even willing to exculpate him from the present charges, instead of endeavoring to double check the data he obtained with the view in mind that justice to the cause of the People would be served.

Notably, under Section 6, Rule 21 of the Revised Rules of Court, service of a subpoena shall be made in the same manner as personal or substituted service of summons. Pertinent sections of Rule 14, in effect, state:

> Sec. 6. *Service in person on defendant.*– Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
>
> Sec. 7. *Substituted service.*– If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Personal service and *substituted* service are the two modes of serving a subpoena. In this case, after respondent's frustrated attempt to personally serve complainant a copy of the subpoena he acted no further. This he cannot deny since the certification itself only reflected: "*I have this 18th day of November 2003 not served of (sic) witness subpoena upon PO1 Rommel Macaspac on the ground that the said PO1 Rommel Macaspac is now [assigned] at WPD Station 2[,] Tondo,*

Manila according to SPO3 Antonio Capuli of the PNP, Orani, Bataan."[10] He did not attest in his report or aver in his Comment that, upon learning that personal service is not possible, he served the subpoena by leaving a copy thereof to some responsible person at complainant's dwelling place in Orani, Bataan or in the police station. Respondent actually had ample time to properly serve it thereafter because complainant was only required to appear as a witness on February 12, 2004, but respondent chose to be apathetic. The manner by which he served the court process clearly does not suffice to comply with the requirements of the Rules.

Respondent's lackadaisical deportment only shows his inefficiency and incompetence to perform the functions of his office. As public servants, process servers like respondent must be constantly aware that they are bound by virtue of their office to exercise the prudence, caution and attention which careful men usually exercise in the management of their affairs.[11] They should be fully cognizant of the nature and responsibilities of their tasks and their impact in giving flesh to the constitutional rights of the litigants to due process and speedy disposition of cases.[12]

In falling short of his mandate, respondent is guilty of simple neglect of duty, which signifies the failure of an employee to give attention to a task expected of him and a disregard of a

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[10] *Rollo,* p. 12.

[11] *Exec. Judge Ulat-Marrero v. Torio, Jr.*, 461 Phil. 654, 661 (2003), as cited in *Rodrigo-Ebron v. Adolfo,* A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 294; *Laguio, Jr. v. Amante-Casicas*, A.M. No. P-05-2092, November 10, 2006, 506 SCRA 705, 710; and *Maxino v. Fabugais*, A.M. No. P-05-1946, January 31, 2005, 450 SCRA 78, 85.

[12] *Judge Sardillo v. Baloloy*, A.M. No. P-06-2192, June 12, 2008, p. 7; *Reyes v. Pablico*, A.M. No. P-06-2109, November 27, 2006, 508 SCRA 146, 155; *Carreon v. Ortega*, A.M. No. P-05-1979, November 27, 2006, 508 SCRA 136, 143; *Laguio, Jr. v. Amante-Casicas, id*; *Alvarez v. Bulao*, A.M. No. P-05-2090, November 18, 2005, 475 SCRA 378, 385; *Maxino v. Fabugais*, id; *Exec. Judge Ulat-Marrero v. Torio, Jr., id*; and *Aguilar v. Judge How*, 455 Phil. 237, 245 (2003).

duty resulting from carelessness or indifference.[13] The term does not necessarily include willful neglect or intentional official wrongdoing.[14] The OCA's recommended penalty of a fine in the amount of ₱3,000, however, does not correspond to the range of penalties provided for under Section 52 (B) (1), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[15] which took effect four days after the promulgation of the *Musni* case. Under the prevailing Rules, simple neglect of duty is classified as a less grave offense which carries the penalty of suspension for one month and one day to six months for the first offense and dismissal for the second offense. Considering the adverse effect of respondent's negligence to the Republic's efforts to curb the proliferation of illegal drugs, he should be suspended for three months without pay.

WHEREFORE, respondent is found *GUILTY* of simple neglect of duty and is *SUSPENDED* for three (3) months without pay, with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

Let a copy of this decision be attached to the personnel records of respondent in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED.

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

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[13] *Rodrigo-Ebron v. Adolfo, supra* at 293; *Reyes v. Pablico, supra* at 156; *Laguio, Jr. v. Amante-Casicas, id*; *Maxino v. Fabugais, supra* at 86; *Exec. Judge Ulat-Marrero v. Torio, Jr., supra* at 660; *Judge Cañete v. Manlosa*, 459 Phil. 224, 230 (2003); and *Atty. Dajao v. Lluch*, 429 Phil. 620, 626 (2002).

[14] *Exec. Judge Ulat-Marrero v. Torio, Jr., id.*

[15] Promulgated by the Civil Service Commission through Resolution No. 991936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, which took effect on September 27, 1999.

FIRST DIVISION

[A.M. No. P-08-2466. August 13, 2008]
(Formerly OCA IPI No. 07-2477-P)

BEN G. SON, *complainant, vs.* **CONCEPCION B. SALVADOR, Court Interpreter, and JOSE V. NALA, JR., Clerk II, Regional Trial Court, Branch 146, Makati City,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; AS A RULE, IN ADMINISTRATIVE PROCEEDINGS THE BURDEN OF PROOF THAT THE RESPONDENT COMMITTED THE ACTS COMPLAINED OF REST ON THE COMPLAINANT; SUSTAINED IN CASE AT BAR.— Respondents cannot be faulted for asserting that complainant is merely relying on pure guesswork, on too many assumptions unconfirmed by evidence. The dismissal of this case is, therefore, proper since respondents enjoy the presumption of regularity in the performance of their duties as well as the presumption of innocence. This is but consistent with *Tam v. Regencia*: Settled is the rule that in administrative proceedings the burden of proof that the respondent committed the acts complained of rests on the complainant. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent and should be derived from direct knowledge. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail.

D E C I S I O N

AZCUNA, *J.*:

On March 20, 2006, complainant filed a *Sinumpaang Salaysay* before the Office of the Ombudsman charging respondents

with violation of the Code of Conduct for Court Personnel (A.M. No. 03-06-13-SC). Submitted to support the complaint was a joint sworn statement of Cesar B. Miranda and Evangeline G. Saldo. Citing this Court's ruling in *Judge Caoibes, Jr. v. Hon. Ombudsman*,[1] however, the Graft Investigation and Prosecution Officer, in an Order dated April 6, 2006, referred the matter to the Office of the Court Administrator (OCA) for appropriate action.

Complainant alleges that sometime in January 2006 at around 10:00 A.M., while accompanying Atty. Ana Luz Cristal (in whose law office he works as a messenger) to a hearing at the Makati Hall of Justice, he saw Nerrie Torrente-Ungsod, the sister of Rolando Torrente against whom he had filed a case for Frustrated Murder, Frustrated Homicide and Attempted Homicide (docketed as I.S. No. 05-I-11140-42), enter the office of respondent Salvador. A month after, he was sent by Atty. Cristal to the Makati Regional Trial Court (RTC), Branch 141 (Br. 141), to see if a hearing of the latter's case had already started. There he again saw respondent Salvador together with respondent Nala inside the courtroom. Complainant claims that respondent Salvador, who is a close friend of the Torrente family, is fixing (*"nag-aayos/nagkakalkal"*) cases against him, using her position and influence to gain access to the records of his cases; and that both respondents are working in favor of the interest of the Torrentes contrary to the Code of Conduct for Court Personnel. He also adds that respondent Salvador is engaged in the business of cellular phone "load" (commonly known as "e-load") and lending money to court employees.

Aside from agreeing with the above allegations, affiants Miranda and Saldo, who are co-employees of complainant in the law office, aver that on September 23, 2005 they filed a Motion to Reduce Bail for the temporary liberty of complainant, who is accused of homicide in Criminal Case No. 89-964 pending before Br. 141. After filing the motion, they were told by the clerk in charge of criminal cases to stay while the order for the recall of the warrant of arrest was being prepared. While waiting,

[1] 413 Phil. 717 (2001).

a man allegedly came inside the office and remarked as he handed to the clerk a folder: "*Ate, ano nang nangyari sa kasong pina-follow up ko sa'yo…? May budget ito, akong bahala sa'yo.*" They were surprised with what they heard. When they asked his identity and the reason why they were following-up the same case, the man purportedly replied: "*Dyan lang ako sa kabila. Inutos lang sa akin ni Ate Connie.*" They inquired who "Ate Connie" is but the man allegedly left in haste. Out of curiosity, they followed him and saw that he went inside the RTC, Br. 146. After they secured the Recall Order, they went to said court and asked for his name. It was disclosed by an employee that the person they were referring to was respondent Nala. Further, Miranda and Saldo assert that I.S. No. 05-I-11140-42 was filed on October 10, 2005 but it dragged on for five months because respondents exploited their positions as court employees.

In her Comment, respondent Salvador counters that the complaint is based on conjectures, presumptions and mere allegations and is not backed up by substantial evidence. She admits that Nerrie visited her office in January 2006 but only for the purpose of inquiring from her where they could secure the services of a lawyer who could prepare their counter-affidavit, as to which she advised her to proceed to the Public Attorneys Office. She also denies that she ever went together with respondent Nala to Br. 141. In any case, respondent Salvador contends that these incidents should not be considered as violation of the Code of Conduct for Court Personnel because the court is a public office and court employees cannot prevent any person from entering it.

Respondent Salvador strongly denies the accusation that she is using her position as court interpreter and as an employee of the court to favor certain people by fixing/dealing and looking into the case records of Br. 141. She submitted the *Pinagsanib na Salaysay* of Henry R. Belen, Jocelyn B. Basbano, Alicia M. Rile, Arlyn M. Lasquite, Robert T. Bautista, Zenia A. Escabarte, Delfin T. Manga, Jr., and Rogelio M. Honrado and

the *Sinumpaang Salaysay* of Zenaida A. Baloduya, all employees of Br. 141. In the joint sworn statement, the affiants deny the allegation that respondents are intruding into the case records of Br. 141, reasoning that this act is not authorized by the branch clerk of court pursuant to the order of their judge. They state that only those employees in charge of the criminal and civil cases are permitted to look into the court records. While the affiants recognize that anyone is free to verify the status of cases, as these are public records, they claim that respondents never fixed nor followed-up the case related to complainant. In her capacity as Clerk III and in-charge of criminal cases, affiant Baloduya moreover declares that since her assignment to the job, she has not permitted anyone, court employees or not, to examine the records of cases, conformably with the instruction of the branch clerk and the directive of the judge. She stresses that she will never allow this act for fear of being penalized.

Concerned that both parties would think that she is taking one side, respondent Salvador further asserted that she has avoided meeting or talking to complainant and Nerrie, either in the vicinity of the court or in their neighborhood, while their cases are pending. Knowing the increasing animosity between them, she claims that she deems it best to distance herself from them even at the cost of losing their friendship. Respondent Salvador, however, admits that it is difficult not to speak with them as they are her neighbors; hence, on several occasions she conversed with them albeit separately. She avers that they both sought her in her office but that she had always advised them that they are neighbors and, being so, they should exert all efforts to amicably settle their dispute. As respondent Salvador feels that both parties are seeking her out as their "go-between" or intermediary, she made it clear to them that she does not want to get involved with their squabbles. She found out though that complainant took it rather harshly as he took her silence and her act of distancing herself as ways of taking the side of Nerrie by purportedly having an active part in the resolution of

the cases between the parties. Respondent Salvador states that although she has worked in the court for quite some time now the truth is that she does not understand the intricacies of legal proceedings, and, consequently, could not offer either party any legal assistance. Likewise, she does not know or understand their cases and she does not wield any influence over any court personnel in Makati.

As regards the allegation that she is into the "e-load" business, respondent Salvador clarifies that her small "e-load" store, which is managed by her relatives, is located in her residence and not in her office at Br. 141, and that the "e-load" sometimes being purchased on credit should not be considered as a money lending business.

For his part, respondent Nala avows that he was not in any way involved in complainant's case pending before Br. 141. He contends that the narrations of Miranda and Saldo in their *Sinumpaang Salaysay* are patent falsehoods as he did not, nor did respondent Salvador, ever approach or attempt to bribe any court personnel. Respondent Nala argues that the allegations of complainant are malicious imputations and are bereft of any verifiable factual basis and should thus be dismissed.

In its Report on December 28, 2006, the OCA opined that the charges leveled by complainant are "serious" and that the allegations of Miranda and Saldo are "disturbing" as these suggest corruption among court personnel. Yet, due to the conflicting versions of the parties, the OCA recommended the referral of the case to an OCA consultant for investigation, report and recommendation.

Per Resolution dated February 5, 2007, this Court resolved to note the OCA Report. On March 13, 2007 the case was referred to Romulo S. Quimbo, as the Hearing Officer Designate.

On May 11, 2007, the Hearing Officer recommended the dismissal of the case for lack of merit but with a general admonition to all employees of the judiciary to avoid any act

that may give rise to a suspicion that they are interested in any case pending in court.

The recommendation is granted.

A plain reading of complainant's testimony during the hearing conducted on March 30, 2007 elicits no substantial evidence to support the charge of respondents' alleged unethical maneuvers relative to the cases pending between complainant and the Torrentes. A portion of the transcript of the proceedings clearly shows this point:

Q Then you say that you saw him enter into the office of the respondents Salvador and Nala?
A Si Lando [referring to Rolando Torrente] *hindi ko nakita kundi lang sila Nerrie at saka mga ilang anak habang kami nagkakaso ngayon sa kaso nilang pamamaril sa akin noong time na kasama ako ni* Ma'am Cristal, *nakita ko yung kapatid*[,] *si* Nerrie.

Q Do you know the purpose of the visit of the Torrentes at Branch 146?
A *Alam ko na na humihingi ng tulong sila kay Connie na tulungan sila sa mga problema nila.*

Q How did you know that that was the purpose of their visit?
A *Kasi sa mga* hearings *po namin, isang beses mismo ako, doon kay* Fiscal Seña *nandoon kami nakaupo sa labas, yung isang* secretary *po nila ni* Fiscal Seña *noong hindi pa dumarating itong mga* Torrentes Family *sa* hearing…

Q What hearing is this?
A *Demanda ko po ng….*

Q Which body or tribunal?
A Fiscal lang.

Q What is the name of that Prosecutor?
A Fiscal Seña

Q When was this hearing before Prosecutor Seña?
A Last year. *Hindi ko na matandaan sa tagal na ito eh.*

Q Around when last year?
A September *yan eh, hindi ko matandaan.*

MR WAGAN:

Basta last year.

A Last year yun. Noong binaril ako nila eh[,] ng Torrente.

Q When were you supposedly shot by Torrente?
A *Hindi ko na matandaan nasa ano ko yan eh.*

Q Do you not remember what part of the year you were shot?
A *Basta* last year *yun*.

Q First quarter, 2nd quarter...?
A *June kami binaril noon* 2005[,] *galing kami sa bakasyon* from Samar[,] 2005 **maari.**

Q So in this case, you are the complainant?
A *Opo*.

Q Now you said that you went to the…. This case was prosecuted before Pros. Seña. When was the proceeding before Pros. Seña?
A July *na siguro*.

Q July of?
A 2005. *Kasi hindi ko na ma*-recall *kasi sa tagal na noon*.

MR WAGAN:

Hindi mo ma-recall. *Dadalin yung ano, yung* records *nasa* office.

A Attorney and (sic) *masasabi ko lang diyan sa tagal na, hindi ko ma*-recall *ang* time…

Q That is enough. What transpired in that supposed hearing before Pros. Seña?

A *May tumawag sa telepono*[,] *sa* secretary *niya*. *Male*-late *pa raw* and (sic) *dating ng mga* Torrente *sa* hearing. *Ang narinig lang namin, ang kasama ko noon ay si* Atty. Valencio, and *narinig namin mismo*[,] *ako ang nakarinig sa* secretary, *"O sige ate sabihin ko na lang kay fiscal."*

Q What did you hear exactly?
A *Yun lang*[.] *"O sige ate sabihin ko kay Fiscal."*

Q Do you have an elder sister?
A *Meron*.

Q What do you call her?
A *Ate Rosa*.

Q So do you know exactly who called that person over the cellphone that you heard?
A *Hindi sinabi kung sinong ate*.

Q So based on that call in July of 2006, you were able to conjecture that the purpose of Nerrie Torrente-Ungsod's visit to Connie Salvador's office [in] January of 2006 was to follow-up on that case?
A *Yan ang pagkakaintindi ko kasi…*

Q Without hearing the name of the person calling the secretary of Pros. Seña?
A *Yan ang pagkakaintindi ko. Kasi maraming* time *na mismong ito si…*

Q No further… That is the end of your answer for now. You say that "*Connie Salvador ay may pinapaborang tao.*" Why do you say that?
A *Kasi itong huling* hearing *din namin dito sa*[,] *kay* Fiscal Riel. *Huling* hearing *naming doon sa isang* case *din kay* Fiscal Riel…

Q What case is this?
A Physical injury.

Q So this is a preliminary investigation?
A *Opo*.

Q Who are you in that case? How are you connected to that case?
A *Kasama kami na ikinomplain*.

Q *Okay*, you are the respondent?
A *Opo*.

Q What happened in that preliminary investigation before Pros. Riel?
A *Iba yan kay* Fiscal Riel. *Tapos na rin yun kasi ako naisama doon sa…*

Q When was this proceeding before Fiscal Riel?
A January *na yon eh.*

Q January of?

MR. WAGAN:

Basta last year.

A *Basta maari noong* last January or *itong* January *na dumating.*

ATTY. CRUZ:

Your Honor, I would like to make of record that so far the complainant has never been definite with any of the dates.

THE COURT:

The Court will rule.

Q What transpired during that supposed proceeding?
A *Noong pagdating ni ano. Siya* (pointing to Mr. Manny Wagan) *mismo ang nagtanong sa* secretary, *nandoon ako nakaupo, kung pang-ilan tayo[,] ano*? *Siya mismo ang nagtanong sa* secretary, *si* Manny Wagan. *Tinatanong nya roon kung* [*pang-ilan*] *ang* hearing *naming.*

Q And then what happened?
A *Ako mismo ang nakarinig sa* secretary, *sinabi*[,] *"ah alam na namin ito tinawag na ni Ninang Connie itong kasong ito."*

Q What was the name of the person who said that…?

MR. WAGAN:

Vivian?

A Vivian.

Q Do you have any…?

MR. WAGAN:

Dalawa sila doon eh, Vivian *o si* Gail.

Q Do you have any written testimony or declaration of that Vivian?

A ***Wala naman. Basta ang intindi ko lang yun salita na "ay alam na namin ito."***

Q So what else?

A *Saka napag-alaman ko po itong si* Vivian [*inaanak*] *ni* Connie *sa kasal. Basta kung alin diyan sa dalawa.*

Q So just because a person knows about the case, you presumed that she is favoring a certain person? Did you not consider that she is also favoring you?

A ***Sana ganun.***

Q So you have no actual direct proof other than these conjectures of yours that you are trying to piece together?

A (no answer from the complainant)

ATTY. CRUZ:

No further questions, Your Honor

x x x x x x x x x

Q So you mean to tell us, Mr. Witness, that other than the fact that a certain Cesar Miranda and Evengeline Saldo allegedly saw Mr. Nala making a follow-up with Branch 141, you have no other direct evidence against Mr. Nala?

A I*sang beses po noong pinatingnan ni* Ma'am *din, di ko na din matandaan yung* hearing *namin noon sa* 141, *umakyat din ako sa taas. Nakita ko si* Connie *at si ano na* [*nanggaling*] *din doon sa* office. *Noong time na iyon maghe*-hearing *kami*…

Q *Sino ang nakita niyo*?

A *Si* Jojo *at si* Connie *nanggaling doon sa upisina ng* 141. *At saka ilang beses kami ni* Connie *mismo nag-usap, mismo si* Connie, *kausap ko. Tuwing maghe*-hearing *kami sa* 141, *minsan nakikita ko si* Connie *na lumalabas sa* Office *ng* Prosecutor Moreno *na nangagaling si Ate* Connie, *ate nga ang tawag ko diyan sa kanya eh, na nanggaling siya sa* Office *ni* Moreno. *Hindi alam ni Ate* Connie *na nandoon ako minsan nakatayo. Tapos nabibigla siya pag bigla*

akong lalabas sa may poste, Pumapasok tuloy tuloy si [*Ate*] Connie *tuloy sa loob ng* office *ng* 141. *Alam ni Ate* Connie *na nabibigla ako pirmi sa …*

THE COURT:

So your case is pending before Branch 141?

A *Opo.*

Q *Yung sinabi mong nakikita mo si* Connie *doon sa upisina ni* Fiscal Moreno*, saan yung upisina ni* Fiscal Moreno?**

A 2nd Floor.

Q *Siya lang ba ang nag-uupisina doon o mayroon pang ibang* Fiscal?

A *Marami.*

Q So *paano niyo nalaman na si* Fiscal Moreno *ang kinakausap ni* Connie?

A *Nagsasama pa nga po sila, magkasabay na patungo sa upisina ng* 141.

Q *Magkasabay lang patungo.*

A *Nag-uusap sila habang naglalakad.* (Emphasis ours)[2]

The above-quoted answers of complainant hardly make a case against respondents. The incidents mentioned by him to strengthen his claim are subject to varying interpretations as, undeniably, he was not within hearing distance to precisely comprehend what was being talked about by the parties involved. Indeed, it is very possible that respondents were innocently talking of a totally unrelated matter or that respondent Salvador *might* have been also looking after the interest of all parties, including complainant, who admitted that he had talked to her many times. The court finds no persuasive evidence pointing otherwise. Notably, complainant no longer attended the subsequent proceedings set on April 3 and 20, and May 4, 2007. Neither were his witnesses, Miranda and Saldo, present on all of the scheduled hearings to affirm the facts alleged in their *Sinumpaang Salaysay*.

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[2] TSN, March 30, 2007, pp. 11-20.

Respondents cannot be faulted for asserting that complainant is merely relying on pure guesswork, on too many assumptions unconfirmed by evidence. The dismissal of this case is, therefore, proper since respondents enjoy the presumption of regularity in the performance of their duties as well as the presumption of innocence. This is but consistent with *Tam v. Regencia*:[3]

> Settled is the rule that in administrative proceedings the burden of proof that the respondent committed the acts complained of rests on the complainant. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent and should be derived from direct knowledge. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail.[4]

WHEREFORE, the administrative complaint against respondents Salvador and Nala is hereby DISMISSED for failure of complainant to substantiate the charges.

SO ORDERED.

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

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[3] A.M. No. MTJ-05-1604, June 27, 2006, 493 SCRA 26.

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

FIRST DIVISION

[G.R. No. 136037. August 13, 2008]

SEVERINO DAVID, JR. Y ECHANE and TIMOTEO GIANAN, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; QUESTION OF CREDIBILITY IS BEST ADDRESSED TO THE TRIAL COURT; RATIONALE.— Time and again, we have held in a number of cases that the issue of credibility is a question best addressed to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have changed the outcome of the case.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Moreover, the grounds adduced in the petition raise factual issues, which are improper in a petition for review under Rule 45 of the Rules of Court. As a rule, only questions of law should be raised in a petition for review under Rule 45. This Court, in the interest of substantial justice and when circumstances so warrant, can nevertheless examine the evidence adduced during the proceedings at the lower courts. A review of the records of this case shows that the trial court did not err in giving credence to the testimonies of the witnesses presented by the prosecution as it did not find any fact or circumstance to show that the said witnesses had falsely testified or that they were actuated by improper motive. These testimonies, found positive and credible by the trial court, are sufficient to support a conviction.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— In *Macalino v. People*, the Court explained the implications of pleading self-defense insofar as the burden of evidence is concerned, to wit: In pleading self-defense, petitioner in effect admitted that he stabbed the victim. It was then incumbent upon him to prove that justifying circumstance to the satisfaction of the court, relying on the strength of his evidence and not on the weakness of the prosecution. The reason is that even if the prosecution evidence were weak, such could not be disbelieved after petitioner admitted the fact of stabbing the victim. The accused who maintains that the killing arose from an impulse of self-defense has the *onus probandi* of proving the elements thereof. The essential requisites being: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. Verily, to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict the injury or wound upon the assailant by employing reasonable means to resist the attack.

4. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; CONSTRUED.— It is well-settled that unlawful aggression presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action. It is a condition *sine qua non* for upholding the justifying circumstance of self-defense. Thus, unless the victim has committed unlawful aggression against the other, there can be no self-defense on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.

5. ID.; FLIGHT OF THE ACCUSED; AS AN INDICATION OF GUILT; PRESENT IN CASE AT BAR.— Verily, his act of fleeing from the scene of the crime instead of reporting the incident to the police authorities is contrary to his proclaimed innocence. Self-defense is not credible in the face of petitioner David's flight from the crime scene and his failure to inform the authorities about the incident.

6. ID.; CONSPIRACY; PRESENT IN CASE AT BAR.— With regard to Gianan, since he did not join David in the present

petition, we find no reason to disturb the trial court's finding that there was conspiracy. David and Gianan's behavior, in stabbing the victim Datalio and trying to hit him with an adobe stone showed their community of design. In *People v. Reyes*, we held, thus: x x x In conspiracy, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was committed or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest. In the instant case, conspiracy was manifest in the concerted efforts of the petitioner and Gianan. They acted together as petitioner David stabbed the victim while Gianan tried to hit him with an adobe stone. Their simultaneous acts indicate a joint purpose, concerted action and concurrence of sentiments. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.

APPEARANCES OF COUNSEL

Law Firm of Chan Robles & Associates for petitioners.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Through this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Severino David, Jr. and Timoteo Gianan seek to annul and set aside the Decision[1] of the Court of Appeals (CA) in *CA-G.R. CR No. 17022* dated July 30, 1997, affirming the November 16, 1993 Decision[2] of the Regional Trial Court (RTC), Branch 171, of Valenzuela, Metro Manila, in *Criminal Case No. 1076-V-92*, convicting them of the crime of frustrated homicide pursuant to Article 50

[1] Penned by Associate Justice Buenaventura J. Guerrero with Associate Justices Jaime M. Lantin and Oswaldo D. Agcaoili, concurring; *rollo*, pp. 83-89.

[2] Penned by Judge Adriano R. Osorio; *id.*, at pp. 98-104.

in relation to Article 249 of the Revised Penal Code. Timoteo Gianan did not join Severino David, Jr. in filing this petition for review on *certiorari*, although the Motion for Extension of Time to File Petition for *Certiorari* was filed by the counsel *de parte* for both accused Severino David, Jr. and Timoteo Gianan.

In an Information[3] dated March 2, 1992, Severino David, Jr. and Timoteo Gianan were accused of frustrated homicide allegedly committed as follows:

> That on or about the 1st day of March, 1992 in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with a fan knife one DOMINGO DATALIO *Y* VALDEZ, thus performing all the acts of execution which would constitute the crime of Homicide as a consequence but which nevertheless, did not produce it by reason or causes independent of the will of the herein accused, that is due to the timely, able and efficient medical attendance rendered to the victim at the Chinese General Hospital, Manila.
>
> Contrary to law.

At their arraignment, petitioner David and Gianan pleaded not guilty.

The prosecution presented as witnesses private complainant Domingo Datalio, SPO3 Francisco Montallana and Benigno David. Accused Severino David, Jr. and Erlin Ecalnir testified for the defense.

After trial on the merits, the RTC found petitioner David and Gianan guilty of the crime charged. The dispositive portion of the RTC decision reads:

> WHEREFORE, finding accused Severino David, Jr. *y* Echane and Timoteo Gianan, Jr. *y* Bataller GUILTY beyond reasonable doubt of the offense charged, pursuant to Article 50 in relation to Article 249 of the Revised Penal Code, they are hereby sentenced each to suffer

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[3] Information, Criminal Case No. 1076-V-92, RTC Record, p. 1.

an indeterminate imprisonment from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *Prision Correccional*, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor*, as maximum, with the accessory penalties prescribed by law and to pay the costs.

Accused are ordered to indemnify the complainant the sum of ₱9,946.05 for actual damages and the further amount of ₱12,000.00 for the unearned income.

SO ORDERED.

Petitioner David and Gianan appealed their conviction to the CA which affirmed *in toto* the decision of the trial court.

Petitioner David and Gianan, through their new counsel of record,[4] moved for a reconsideration of the CA decision but the appellate court denied said motion for lack of merit[5] stating that no persuasive arguments were raised to alter its previous pronouncement.

The gist of the conflicting versions of the prosecution and the defense, as quoted from the Decision of the CA, follows:

PROSECUTION'S VERSION:

Between 10:30 and 11:00 p.m. on 01 March 1992 while Domingo Datalio was walking alone in an alley from the Valdez compound where he lived at Valenzuela, Metro Manila, he met Severino David and Timoteo Gianan both of whom were not his acquaintances. Severino stabbed him while Timoteo tried to hit him with an adobe stone, but Domingo kicked him. Wounded, Domingo ran out of the alley and called for his sister to bring him to the hospital.

Brought to the MCU hospital, Domingo was transferred to Chinese General Hospital where he was treated. Per the Medico-Legal Certificate signed by the resident on duty, he suffered a stab wound at the lower abdomen (Exhibit D).

SPO3 Francisco Montallana received the report of the stabbing incident. Together with two policemen, he proceeded to the venue

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[4] Notice of Appearance for Accused-Appellants (herein Petitioners) Severino David, Jr. and Timoteo Gianan, Jr., dated August 25, 1997, *id.*, at pp. 126-127.

[5] CA Resolution dated October 9, 1998, *id.*, at pp. 20-21.

of the crime at Valdez Compound, Malinta, Valenzuela. Upon reaching the place, Montallana was told the suspect was in a house inside the compound. On their way to that house, suspect Timoteo Gianan was surrendered by a Bantay Bayan in a street corner near the place of the stabbing. At the house where suspect Severino was, the policemen were allowed to enter by the owner. Then, Severino came out and surrendered a fan knife. The police team brought both suspects to the SID of the Valenzuela Police Station.

The stabbing was witnessed by Benigno David, a *barangay* tanod of Paso de Blas. He was in the house of Fernando Datalio conversing with the latter when at a distance of about two (2) meters, he saw Severino stab Domingo. He directed some of his co-*barangay* tanods to call for the police while he went down from Fernando's terrace. Timoteo came out carrying a piece of stone and a bottle of beer. He stopped Timoteo and asked him where he came from. Timoteo replied he was looking for the enemy of his companion. Three policemen arrived and asked Benigno to watch Timoteo. After the other suspect was arrested, the policemen brought with them the two.

DEFENSE'S VERSION:

At 10:30 p.m. on 01 March 1992, Severino David, Jr. was outside his house located inside the Valdez Compound, resting and taking some fresh air. While he was in front of the house, he saw Domingo Datalio drunk and walking in a zigzagging manner to the door of Severino David's house at 433 Paso de Blas, Valenzuela, Metro Manila. Domingo knocked at Severino's door three times, cursing and challenging him to go downstairs. Severino woke up and went downstairs. As he approached Domingo, the latter suddenly stabbed him with a fan knife. Severino evaded the thrust. When Domingo made another thrust, Severino caught Domingo's hand with the knife and twisted it towards his stomach. Domingo's body was stabbed. Thereafter, Severino ran to his sister's house located nearby and reported to her what happened. His sister asked him to stay in the house.

Timoteo Gianan is residing in Meycauayan, Bulacan. On 01 March 1992, he went to Severino's house at 6:00 p.m., staying there up to 9:30 p.m.

On December 10, 1998, petitioner lodged the instant Petition for Review on *Certiorari* before this Court citing two (2) alleged errors:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ADOPTED CONCLUSIONS MADE BY THE COURT *A QUO*, CITED AS SOLE BASIS FOR CONVICTING ACCUSED-PETITIONER, AS THE SAME IS PATENTLY AGAINST THE ESTABLISHED FACTS OF THIS CASE AND CONTRARY TO LAW, JURISPRUDENCE AND HUMAN NATURE/EXPERIENCE.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT TOTALLY DISREGARDED THE THEORY OF SELF-DEFENSE BY ACCUSED-PETITIONER WHICH REMAINED CREDIBLE AND UNCONTROVERTED. HEREIN ACCUSED-PETITIONER DESERVES TO BE ACQUITTED BASED ON SELF-DEFENSE.

This petition is anchored on the alleged gross misappreciation and disregard by the appellate court of essential facts which might dramatically change the outcome of the case. It alleges that the "conclusions and observations" made by the lower courts were not supported by the evidence on record and not in accord with the legal tenets and jurisprudence involving their theory of self-defense.

First, petitioner David claimed that his act of going to his sister's house after the stabbing incident was "meant not to hide from the alleged 'crime' but to seek succor as he was shocked by the accidental hurting [stabbing]" of Domingo Datalio.[6]

Second, he argued that the credence accorded to the testimony of SPO3 Francisco Montallana of the Valenzuela Police Station, who responded to the incident, that he [David] refused to come out of his sister's house and that the police authorities had to apprehend him inside the house was misplaced as he, together with Gianan, never resisted arrest nor attempted to escape.

Third, petitioner David contended that their [David and Gianan's] failure or omission to give their respective statements

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[6] Petition for Review on *Certiorari* dated December 10, 1998, *id.*, at p. 39.

to the police authorities to explain their side right after the stabbing incident should not be taken against them as it would contravene their constitutional right to be presumed innocent until proven guilty as charged.

Finally, petitioner asserted that his theory of self-defense remained credible and uncontroverted and therefore his acquittal is warranted.

The Court is not persuaded.

In essence, petitioner and Gianan want this Court to weigh the credibility of the prosecution witnesses against that of the defense witnesses and to review the observations and conclusions made by the CA to bolster their contention that their acquittal is justified.

Time and again, we have held in a number of cases[7] that the issue of credibility is a question best addressed to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have changed the outcome of the case.

Moreover, the grounds adduced in the petition raise factual issues, which are improper in a petition for review under Rule 45 of the Rules of Court. As a rule, only questions of law should be raised in a petition for review under Rule 45.[8] This Court, in the interest of substantial justice and when circumstances

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[7] *People v. Cañete*, G.R. No. 138366, 410 SCRA 544, September 11, 2003; *People v. Bates*, G.R. No. 139907, 400 SCRA 95, March 28, 2003; *People v. Peralta*, G.R. No. 133267, 387 SCRA 45, August 8, 2002; *People v. Bolivar*, 352 SCRA 438 (2001); *People v. Baltazar*, 352 SCRA 678 (2001); *People v. Glabo*, G.R. No. 129248, 371 SCRA 567, December 7, 2001.

[8] Rule 45, Section 1, Rules of Court.

so warrant, can nevertheless examine the evidence adduced during the proceedings at the lower courts.

A review of the records of this case shows that the trial court did not err in giving credence to the testimonies of the witnesses presented by the prosecution as it did not find any fact or circumstance to show that the said witnesses had falsely testified or that they were actuated by improper motive. These testimonies, found positive and credible by the trial court, are sufficient to support a conviction.

Benigno David, who witnessed the stabbing incident at a distance of about two (2) meters, was categorical and frank in his testimony. He unmistakably identified petitioner Severino David, Jr. as the man who stabbed Datalio. He likewise identified Gianan as the man whom he saw with a stone and running after the victim Datalio. Witness SPO3 Francisco Montallana testified that after the stabbing incident, Timoteo Gianan was surrendered to him by a Bantay Bayan and that he apprehended petitioner David who surrendered to him the fan knife used in stabbing Domingo Datalio. The defense failed to impute any ill-motive to said witnesses which would discredit their positive identification of David and Gianan. Our consistent ruling has been that the witnesses' testimony deserves full faith and credit where there exists no evidence to show any dubious reason or improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[9]

Domingo Datalio, the victim, also identified petitioner David as the person who stabbed him and Gianan as the one who tried to hit him with an adobe stone.

In impleading self-defense, petitioner David asserted that it was the victim Datalio who knocked on the door of his house and challenged him to a fight. Allegedly, the former had no choice but to defend himself when Datalio attempted to stab him with a bladed weapon.

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[9] *People v. Cañete*, *supra*, citing *People v. Lomerio*, 326 SCRA 530 (2000) and *People v. Merino*, 321 SCRA 199 (1999).

We stress that when petitioner David invoked self-defense, the burden of evidence is shifted from the prosecution to the defense. Thus, the latter assumed the responsibility of establishing this plea by clear and convincing evidence. Upon him was the duty of proving, to the satisfaction of the trial court, the justifying circumstance of self-defense.[10]

In *Macalino v. People*,[11] the Court explained the implications of pleading self-defense insofar as the burden of evidence is concerned, to wit:

> In pleading self-defense, petitioner in effect admitted that he stabbed the victim. It was then incumbent upon him to prove that justifying circumstance to the satisfaction of the court, relying on the strength of his evidence and not on the weakness of the prosecution. The reason is that even if the prosecution evidence were weak, such could not be disbelieved after petitioner admitted the fact of stabbing the victim.

The accused who maintains that the killing arose from an impulse of self-defense has the *onus probandi* of proving the elements thereof.[12] The essential requisites being: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[13] Verily, to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict the injury or wound upon the assailant by employing reasonable means to resist the attack.[14]

In the present case, petitioner David asserted that there was unlawful aggression on the part of the victim when the latter knocked

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[10] *People v. Rabanal*, 349 SCRA 655, January 19, 2001.

[11] 340 SCRA 11, September 7, 2000.

[12] *People v. Almazan*, 365 SCRA 373, September 17, 2001.

[13] Article 11 of the Revised Penal Code; *People v. Silvano*, 350 SCRA 650, January 31, 2001; *People v. Plazo*, 350 SCRA 433, January 29, 2001; and *Roca v. Court of Appeals*, 350 SCRA 414, January 29, 2001.

[14] *People v. Sarmiento*, 357 SCRA 447, April 30, 2001.

on his door and challenged him to a fight. He added that when he opened the door of his house, the victim called him out, cursed him and tried to stab him with a fan knife. He allegedly evaded the first thrust and when the victim tried to stab him again, he grabbed the hand of Datalio which held the knife and the latter was stabbed by the same weapon which was still in the hand of Datalio which David had grabbed and twisted. Petitioner David insisted that under the circumstances, he was legally justified to ward off the alleged unlawful aggression from Datalio.

The assertions of petitioner David invite incredulity. The facts and evidence of this case, as presented by the defense itself, do not support such allegations.

First, as narrated by petitioner David, the victim was drunk and walking in a zigzag manner before reaching the door of his house. Clearly, if this was true, Datalio would not have been physically strong enough to pose a danger to petitioner David who was then sober and already sleeping inside his house. Second, after allegedly being challenged to a fight by a drunk outside his house, we find it unbelievable that petitioner David would come out and confront this intoxicated person if this person was in a position to harm him. It certainly goes against human nature to go out, court danger and meet head-on the alleged unlawful aggression when one is already in the safety and confines of his own house. Third, both testimonies of petitioner David and defense witness Ecalnir that it was the victim Datalio who was holding the fan knife when he fell down after the scuffle are contrary to the testimony of SPO3 Montallana, that after being accosted in his sister's house, petitioner David came out and surrendered the fan knife allegedly used in the stabbing incident. Fourth, petitioner David himself testified that the victim Datalio had no motive nor reason to challenge him to a fight as they did not have any misunderstanding or disagreement. These circumstances undeniably negate the existence of the unlawful aggression. Lastly, petitioner David did not offer any explanation why after the incident, he had to rush and hide in his sister's house which was more or less twenty (20) meters away from his house. He likewise offered no explanation why

he did not immediately go to the police to report the alleged unlawful aggression of the victim towards him and his [David's] purported unintentional stabbing of the victim in self-defense.

It is well-settled that unlawful aggression presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action.[15] It is a condition *sine qua non* for upholding the justifying circumstance of self-defense.[16] Thus, unless the victim has committed unlawful aggression against the other, there can be no self-defense on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[17]

Self-defense, as espoused by petitioner David, can be so readily claimed even if false. It is normally asserted with promptness if true so that the failure to do so upon surrendering to the police is inconsistent with the claim of self-defense. The records clearly show that petitioner David gave no indication that he acted in self-defense when he fled from the scene of the crime and hid at his sister's house. It was only when the police authorities came to accost him that he came out and readily admitted to being the author of the crime. No mention was ever made that he acted in self-defense. He even surrendered to the police the fan knife that he used in stabbing the victim, contrary to his earlier statement that it was the victim Datalio who was holding the fan knife when he fell down after the stabbing incident. It is striking to note again that he did not plead self-defense at that instance.

Verily, his act of fleeing from the scene of the crime instead of reporting the incident to the police authorities is contrary to his proclaimed innocence. Self-defense is not credible in the

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[15] *Toledo v. People*, G.R. No. 158057, 439 SCRA 94, September 24, 2004; *People v. Tagana*, G.R. No. 133027, 424 SCRA 620, March 4, 2004; and *People v. Rabanal, supra*.

[16] *People v. Camacho*, 359 SCRA 200, June 20, 2001.

[17] *People v. Flores*, 356 SCRA 332, April 4, 2001; *People v. Court of Appeals*, 352 SCRA 599, February 23, 2001; *Calim v. Court of Appeals*, 351 SCRA 559, February 13, 2001.

face of petitioner David's flight from the crime scene and his failure to inform the authorities about the incident.

With regard to Gianan, since he did not join David in the present petition, we find no reason to disturb the trial court's finding that there was conspiracy. David and Gianan's behavior, in stabbing the victim Datalio and trying to hit him with an adobe stone showed their community of design. In *People v. Reyes*,[18] we held, thus:

> xxx In conspiracy, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was committed or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.

In the instant case, conspiracy was manifest in the concerted efforts of the petitioner and Gianan. They acted together as petitioner David stabbed the victim while Gianan tried to hit him with an adobe stone. Their simultaneous acts indicate a joint purpose, concerted action and concurrence of sentiments. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[19]

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision and the Resolution of the Court of Appeals in CA-G.R. CR No. 17022, dated July 30, 1997 and October 9, 1998, respectively, are hereby affirmed.

SO ORDERED.

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

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[18] G.R. No. 135682, 399 SCRA 528, March 26, 2003, citing *People v. Cabilto*, G.R. Nos. 128816 & 139979-80, 362 SCRA 325, August 8, 2001.

[19] *People v. Reyes, supra*, citing *People v. Suela*, G.R. Nos. 133570-71, 373 SCRA 163, January 15, 2002.

THIRD DIVISION

[G.R. No. 155207. August 13, 2008]

WILHELMINA S. OROZCO, *petitioner, vs.* **THE FIFTH DIVISION OF THE HONORABLE COURT OF APPEALS, PHILIPPINE DAILY INQUIRER, and LETICIA JIMENEZ MAGSANOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BOND, REQUIRED; EXCEPTIONS.— This issue was settled by this Court in its Resolution dated April 29, 2005. There, the Court held: But while the posting of a cash or surety bond is jurisdictional and is a condition *sine qua non* to the perfection of an appeal, there is a plethora of jurisprudence recognizing exceptional instances wherein the Court relaxed the bond requirement as a condition for posting the appeal. x x x In the case of *Taberrah v. NLRC,* the Court made note of the fact that the assailed decision of the Labor Arbiter concerned did not contain a computation of the monetary award due the employees, a circumstance which is likewise present in this case. In said case, the Court stated, As a rule, compliance with the requirements for the perfection of an appeal within the reglamentary (sic) period is mandatory and jurisdictional. However, in *National Federation of Labor Unions v. Ladrido* as well as in several other cases, this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality. The judgment of the Labor Arbiter in this case merely stated that petitioner was entitled to backwages, 13th month pay and service incentive leave pay without however including a computation of the alleged amounts. x x x In the case of *NFLU v. Ladrido III,* this Court postulated that "private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision

of the labor arbiter." The computation of the amount awarded to petitioner not having been clearly stated in the decision of the labor arbiter, private respondents had no basis for determining the amount of the bond to be posted. Thus, while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit of exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. But while this Court may relax the observance of reglementary periods and technical rules to achieve substantial justice, it is not prepared to give due course to this petition and make a pronouncement on the weighty issue obtaining in this case until the law has been duly complied with and the requisite appeal bond duly paid by private respondents.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between parties. The four elements of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. Of these four elements, it is the power of control which is the most crucial and most determinative factor, so important, in fact, that the other elements may even be disregarded. As this Court has previously held: the significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of performance of the service being rendered, and the degree to which the principal may intervene to exercise such control. In other words, the test is whether the employer controls or has reserved the right to control the employee, not only as to the work done, but also as to the means and methods by which the same is accomplished.

3. ID.; ID.; ID.; ID.; RULES WHICH SERVE AS GENERAL GUIDELINES TOWARDS THE ACHIEVEMENT OF THE MUTUALLY DESIRED RESULT ARE NOT INDICATIVE OF THE POWER OF CONTROL; RATIONALE.— Not all rules

imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control. Thus, this Court has explained: It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement. Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. x x x. The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results.

4. ID.; ID.; ID.; ID.; THE NEWSPAPER'S POWER TO APPROVE OR REJECT PUBLICATION OF ANY SPECIFIC ARTICLE IS NOT THE CONTROL CONTEMPLATED IN THE "CONTROL TEST."— The newspaper's power to approve or reject publication of any specific article she wrote for her column cannot be the control contemplated in the "control test," as it is but logical that one who commissions another to do a piece of work should have the right to accept or reject the product. The important factor to consider in the "control test" is still the element of control over how the work itself is done, not just the end result thereof. In contrast, a regular reporter is not as independent in doing his or her work for the newspaper. We note the common practice in the newspaper business of assigning its regular reporters to cover specific subjects,

geographical locations, government agencies, or areas of concern, more commonly referred to as "beats." A reporter must produce stories within his or her particular beat and cannot switch to another beat without permission from the editor. In most newspapers also, a reporter must inform the editor about the story that he or she is working on for the day. The story or article must also be submitted to the editor at a specified time. Moreover, the editor can easily pull out a reporter from one beat and ask him or her to cover another beat, if the need arises.

5. ID.; ID.; ID.; ID.; ECONOMIC REALITY TEST; EXPLAINED.— Aside from the control test, this Court has also used the economic reality test. The economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate when, as in this case, there is no written agreement or contract on which to base the relationship. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.

6. ID.; ID.; ID.; ID.; DETERMINATION IF A PERSON IS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR MUST BE BASED ON THE PARTICULAR CIRCUMSTANCE OF EACH CASE.— There is no inflexible rule to determine if a person is an employee or an independent contractor; thus, the characterization of the relationship must be made based on the particular circumstances of each case. There are several factors that may be considered by the courts, but as we already said, the right to control is the dominant factor in determining whether one is an employee or an independent contractor. In our jurisdiction, the Court has held that an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on one's own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.

APPEARANCES OF COUNSEL

Movement of Attorneys for Brotherhood, Integrity & Nationalism, Inc. for petitioner.

Ortega Del Castillo Bacorro Odulio, Calma & Carbonell for private respondents.

D E C I S I O N

NACHURA, *J.*:

The case before this Court raises a novel question never before decided in our jurisdiction – whether a newspaper columnist is an employee of the newspaper which publishes the column.

In this Petition for Review under Rule 45 of the Revised Rules on Civil Procedure, petitioner Wilhelmina S. Orozco assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50970 dated June 11, 2002 and its Resolution[2] dated September 11, 2002 denying her Motion for Reconsideration. The CA reversed and set aside the Decision[3] of the National Labor Relations Commission (NLRC), which in turn had affirmed the Decision[4] of the Labor Arbiter finding that Orozco was an employee of private respondent *Philippine Daily Inquirer* (PDI) and was illegally dismissed as columnist of said newspaper.

In March 1990, PDI engaged the services of petitioner to write a weekly column for its Lifestyle section. She religiously submitted her articles every week, except for a six-month stint in New York City when she, nonetheless, sent several articles

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring; *rollo*, pp. 101-106.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Teodoro P. Regino and Remedios Salazar-Fernando, concurring; *id.* at 107.

[3] *Id.* at 89-98.

[4] *Id.* at 83-88.

through mail. She received compensation of ₱250.00 – later increased to ₱300.00 – for every column published.[5]

On November 7, 1992, petitioner's column appeared in the PDI for the last time. Petitioner claims that her then editor, Ms. Lita T. Logarta,[6] told her that respondent Leticia Jimenez Magsanoc, PDI Editor in Chief, wanted to stop publishing her column for no reason at all and advised petitioner to talk to Magsanoc herself. Petitioner narrates that when she talked to Magsanoc, the latter informed her that it was PDI Chairperson Eugenia Apostol who had asked to stop publication of her column, but that in a telephone conversation with Apostol, the latter said that Magsanoc informed her (Apostol) that the Lifestyle section already had many columnists.[7]

On the other hand, PDI claims that in June 1991, Magsanoc met with the Lifestyle section editor to discuss how to improve said section. They agreed to cut down the number of columnists by keeping only those whose columns were well-written, with regular feedback and following. In their judgment, petitioner's column failed to improve, continued to be superficially and poorly written, and failed to meet the high standards of the newspaper. Hence, they decided to terminate petitioner's column.[8]

Aggrieved by the newspaper's action, petitioner filed a complaint for illegal dismissal, backwages, moral and exemplary damages, and other money claims before the NLRC.

On October 29, 1993, Labor Arbiter Arthur Amansec rendered a Decision in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered, finding complainant to be an employee of respondent company; ordering respondent company to reinstate her to her former or equivalent position, with backwages.

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[5] Position Paper for Complainant, CA *rollo*, p. 39.

[6] Also named in parts of the records as "Lolita" or "Lita."

[7] Reply to Respondent's Position Paper, CA *rollo*, p. 40.

[8] Petition for *Certiorari*, G.R. No. 117605, CA *rollo*, p. 4.

Respondent company is also ordered to pay her 13th month pay and service incentive leave pay.

Other claims are hereby dismissed for lack of merit.

SO ORDERED.[9]

The Labor Arbiter found that:

[R]espondent company exercised full and complete control over the means and method by which complainant's work – that of a regular columnist – had to be accomplished. This control might not be found in an instruction, verbal or oral, given to complainant defining the means and method she should write her column. Rather, this control is manifested and certained (sic) in respondents' admitted prerogative to reject any article submitted by complainant for publication.

By virtue of this power, complainant was helplessly constrained to adopt her subjects and style of writing to suit the editorial taste of her editor. Otherwise, off to the trash can went her articles.

Moreover, this control is already manifested in column title, "Feminist Reflection" allotted complainant. Under this title, complainant's writing was controlled and limited to a woman's perspective on matters of feminine interests. That respondent had no control over the subject matter written by complainant is strongly belied by this observation. Even the length of complainant's articles were set by respondents.

Inevitably, respondents would have no control over when or where complainant wrote her articles as she was a columnist who could produce an article in thirty (3) (sic) months or three (3) days, depending on her mood or the amount of research required for an article but her actions were controlled by her obligation to produce an article a week. If complainant did not have to report for work eight (8) hours a day, six (6) days a week, it is because her task was mainly mental. Lastly, the fact that her articles were (sic) published weekly for three (3) years show that she was respondents' regular employee, not a once-in-a-blue-moon contributor who was not under any pressure or obligation to produce regular articles and who wrote at his own whim and leisure.[10]

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[9] *Rollo*, p. 88.

[10] *Id.* at 86-87.

PDI appealed the Decision to the NLRC. In a Decision dated August 23, 1994, the NLRC Second Division dismissed the appeal thereby affirming the Labor Arbiter's Decision. The NLRC initially noted that PDI failed to perfect its appeal, under Article 223 of the Labor Code, due to non-filing of a cash or surety bond. The NLRC said that the reason proffered by PDI for not filing the bond – that it was difficult or impossible to determine the amount of the bond since the Labor Arbiter did not specify the amount of the judgment award – was not persuasive. It said that all PDI had to do was compute based on the amount it was paying petitioner, counting the number of weeks from November 7, 1992 up to promulgation of the Labor Arbiter's decision.[11]

The NLRC also resolved the appeal on its merits. It found no error in the Labor Arbiter's findings of fact and law. It sustained the Labor Arbiter's reasoning that respondent PDI exercised control over petitioner's work.

PDI then filed a Petition for Review[12] before this Court seeking the reversal of the NLRC Decision. However, in a Resolution[13] dated December 2, 1998, this Court referred the case to the Court of Appeals, pursuant to our ruling in *St. Martin Funeral Homes v. National Labor Relations Commission*.[14]

The CA rendered its assailed Decision on June 11, 2002. It set aside the NLRC Decision and dismissed petitioner's Complaint. It held that the NLRC misappreciated the facts and rendered a ruling wanting in substantial evidence. The CA said:

> The Court does not agree with public respondent NLRC's conclusion. First, private respondent admitted that she was and [had] never been considered by petitioner PDI as its employee. Second, it is not disputed that private respondent had no employment contract

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[11] *Id.* at 96.

[12] Docketed as G.R. No. 117605, CA *rollo*, pp. 2-18.

[13] CA *rollo*, p. 209.

[14] 356 Phil. 811 (1998).

with petitioner PDI. In fact, her engagement to contribute articles for publication was based on a verbal agreement between her and the petitioner's Lifestyle Section Editor. Moreover, it was evident that private respondent was not required to report to the office eight (8) hours a day. Further, it is not disputed that she stayed in New York for six (6) months without petitioner's permission as to her leave of absence nor was she given any disciplinary action for the same. These undisputed facts negate private respondent's claim that she is an employee of petitioner.

Moreover, with regards (sic) to the control test, the public respondent NLRC's ruling that the guidelines given by petitioner PDI for private respondent to follow, *e.g.* in terms of space allocation and length of article, is not the form of control envisioned by the guidelines set by the Supreme Court. The length of the article is obviously limited so that all the articles to be featured in the paper can be accommodated. As to the topic of the article to be published, it is but logical that private respondent should not write morbid topics such as death because she is contributing to the lifestyle section. Other than said given limitations, if the same could be considered limitations, the topics of the articles submitted by private respondent were all her choices. Thus, the petitioner PDI in deciding to publish private respondent's articles only controls the result of the work and not the means by which said articles were written.

As such, the above facts failed to measure up to the control test necessary for an employer-employee relationship to exist.[15]

Petitioner's Motion for Reconsideration was denied in a Resolution dated September 11, 2002. She then filed the present Petition for Review.

In a Resolution dated April 29, 2005, the Court, without giving due course to the petition, ordered the Labor Arbiter to clarify the amount of the award due petitioner and, thereafter, ordered PDI to post the requisite bond. Upon compliance therewith, the petition would be given due course. Labor Arbiter Amansec clarified that the award under the Decision amounted to ₱15,350.00. Thus, PDI posted the requisite bond on January 25, 2007.[16]

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[15] *Supra* note 1.

[16] Manifestation and Compliance, *rollo*, pp. 410-416.

We shall initially dispose of the procedural issue raised in the Petition.

Petitioner argues that the CA erred in not dismissing outright PDI's Petition for *Certiorari* for PDI's failure to post a cash or surety bond in violation of Article 223 of the Labor Code.

This issue was settled by this Court in its Resolution dated April 29, 2005.[17] There, the Court held:

> But while the posting of a cash or surety bond is jurisdictional and is a condition *sine qua non* to the perfection of an appeal, there is a plethora of jurisprudence recognizing exceptional instances wherein the Court relaxed the bond requirement as a condition for posting the appeal.
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> In the case of *Taberrah v. NLRC,* the Court made note of the fact that the assailed decision of the Labor Arbiter concerned did not contain a computation of the monetary award due the employees, a circumstance which is likewise present in this case. In said case, the Court stated,
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> > As a rule, compliance with the requirements for the perfection of an appeal within the reglamentary (sic) period is mandatory and jurisdictional. However, in *National Federation of Labor Unions v. Ladrido* as well as in several other cases, this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality.
>
> The judgment of the Labor Arbiter in this case merely stated that petitioner was entitled to backwages, 13th month pay and service incentive leave pay without however including a computation of the alleged amounts.

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[17] Penned by Associate Justice Dante O. Tinga, with Associate Justices Reynato S. Puno (now Chief Justice), Ma. Alicia Austria-Martinez, Romeo J. Callejo, Sr. (now retired), and Minita V. Chico-Nazario, concurring; *id.* at 380-393.

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In the case of *NFLU v. Ladrido III*, this Court postulated that "private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter." The computation of the amount awarded to petitioner not having been clearly stated in the decision of the labor arbiter, private respondents had no basis for determining the amount of the bond to be posted.

Thus, while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit of exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. But while this Court may relax the observance of reglementary periods and technical rules to achieve substantial justice, it is not prepared to give due course to this petition and make a pronouncement on the weighty issue obtaining in this case until the law has been duly complied with and the requisite appeal bond duly paid by private respondents.[18]

Records show that PDI has complied with the Court's directive for the posting of the bond;[19] thus, that issue has been laid to rest.

We now proceed to rule on the merits of this case.

The main issue we must resolve is whether petitioner is an employee of PDI, and if the answer be in the affirmative, whether she was illegally dismissed.

We rule for the respondents.

The existence of an employer-employee relationship is essentially a question of fact.[20] Factual findings of quasi-judicial

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[18] *Id.* at 387-392. (Citations omitted.)

[19] *Supra* note 16.

[20] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64, citing *Manila Water Company, Inc. v. Peña*, 434 SCRA 53, 58 (2004).

agencies like the NLRC are generally accorded respect and finality if supported by substantial evidence.[21]

Considering, however, that the CA's findings are in direct conflict with those of the Labor Arbiter and NLRC, this Court must now make its own examination and evaluation of the facts of this case.

It is true that petitioner herself admitted that she "was not, and [had] never been considered respondent's employee because the terms of works were arbitrarily decided upon by the respondent."[22] However, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.[23]

This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between parties.[24] The four elements of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[25]

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[21] *The Peninsula Manila, et al. v. Alipio*, G.R. No. 167310, June 17, 2008, citing *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 272 SCRA 172, 179 (1997).

[22] Reply to Respondent's Position Paper, CA *rollo*, p. 40.

[23] *Insular Life Assurance, Inc. v. National Labor Relations Commission*, G.R. No. 119930, March 12, 1993, 287 SCRA 476, 483, citing *Industrial Timber Corporation v. NLRC*, 169 SCRA 341 (1989).

[24] *Lopez v. Metropolitan Waterworks and Sewage System*, G.R. No. 154472, June 30, 2005, 462 SCRA 428, 442.

[25] *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, G.R. No. 162833, June 15, 2007, 524 SCRA 690, 695, citing *Sy v. Court of Appeals*, 398 SCRA 301, 307-308 (2003); *Pacific Consultants International Asia, Inc. v. Schonfeld*, G.R. No. 166920, February 19, 2007, 516 SCRA 209, 228.

Of these four elements, it is the power of control which is the most crucial[26] and most determinative factor,[27] so important, in fact, that the other elements may even be disregarded.[28] As this Court has previously held:

> the significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of performance of the service being rendered, and the degree to which the principal may intervene to exercise such control.[29]

In other words, the test is whether the employer controls or has reserved the right to control the employee, not only as to the work done, but also as to the means and methods by which the same is accomplished.[30]

Petitioner argues that several factors exist to prove that respondents exercised control over her and her work, namely:

> a. As to the Contents of her Column – The PETITIONER had to insure that the contents of her column hewed closely to the objectives of its Lifestyle Section and the over-all principles that the newspaper projects itself to stand for. As admitted, she wanted to write about death in relation to All Souls Day but was advised not to.
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> b. As to Time Control – The PETITIONER, as a columnist, had to observe the deadlines of the newspaper for her articles to be

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[26] *Abante, Jr. v. Lamadrid Bearing and Parts Corporation,* G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[27] *Sandigan Savings and Loan Bank, Inc v. National Labor Relations Commission,* 324 Phil. 358 (1996), citing *Ruga v. NLRC,* 181 SCRA 266, 273 (1990). See also *Coca Cola Bottlers (Phils.), Inc. v. Climaco,* G.R. No. 146881, February 5, 2007, 514 SCRA 164, 177.

[28] *Sandigan Savings and Loan Bank, Inc., v. National Labor Relations Commission, supra,* citing *Sara v. Agarrado,* 166 SCRA 625, 630 (1988).

[29] *AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission,* 334 Phil. 712, 721-722 (1997).

[30] *Lazaro v. Social Security Commission,* 479 Phil. 385, 389-390 (2004), citing *Investment Planning Corporation v. Social Security System,* 21 SCRA 924, 928-929 (1967). See also *Abante, Jr. v. Lamadrid Bearing and Parts Corporation, supra* note 26.

published. These deadlines were usually that time period when the Section Editor has to "close the pages" of the Lifestyle Section where the column in (sic) located. "To close the pages" means to prepare them for printing and publication.

As a columnist, the PETITIONER's writings had a definite day on which it was going to appear. So she submitted her articles two days before the designated day on which the column would come out.

This is the usual routine of newspaper work. Deadlines are set to fulfill the newspapers' obligations to the readers with regard to timeliness and freshness of ideas.

c. As to Control of Space – The PETITIONER was told to submit only two or three pages of article for the column, (sic) "Feminist Reflections" per week. To go beyond that, the Lifestyle editor would already chop off the article and publish the rest for the next week. This shows that PRIVATE RESPONDENTS had control over the space that the PETITIONER was assigned to fill.

d. As to Discipline – Over time, the newspaper readers' eyes are trained or habituated to look for and read the works of their favorite regular writers and columnists. They are conditioned, based on their daily purchase of the newspaper, to look for specific spaces in the newspapers for their favorite write-ups/or opinions on matters relevant and significant issues aside from not being late or amiss in the responsibility of timely submission of their articles.

The PETITIONER was disciplined to submit her articles on highly relevant and significant issues on time by the PRIVATE RESPONDENTS who have a say on whether the topics belong to those considered as highly relevant and significant, through the Lifestyle Section Editor. The PETITIONER had to discuss the topics first and submit the articles two days before publication date to keep her column in the newspaper space regularly as expected or without miss by its readers.[31]

Given this discussion by petitioner, we then ask the question: *Is this the form of control that our labor laws contemplate such as to establish an employer-employee relationship between petitioner and respondent PDI?*

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[31] *Rollo,* pp. 75-76.

It is not.

Petitioner has misconstrued the "control test," as did the Labor Arbiter and the NLRC.

Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control.[32] Thus, this Court has explained:

> It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
>
> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. x x x. [33]

The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results. Thus, in this case, we

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[32] *Manila Electric Company v. Benamira,* G.R. No. 145271, July 14, 2005, 463 SCRA 331, 352-353. (Citations omitted.)

[33] *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 464-465; *Consulta v. Court of Appeals*, G.R. No. 145443, March 18, 2005, 453 SCRA 732, 740-741; *Manila Electric Company v. Benamira, supra*.

are to examine the factors enumerated by petitioner to see if these are merely guidelines or if they indeed fulfill the requirements of the control test.

Petitioner believes that respondents' acts are meant to control how she executes her work. We do not agree. A careful examination reveals that the factors enumerated by the petitioner are inherent conditions in running a newspaper. In other words, the so-called control as to time, space, and discipline are dictated by the very nature of the newspaper business itself.

We agree with the observations of the Office of the Solicitor General that:

> The Inquirer is the publisher of a newspaper of general circulation which is widely read throughout the country. As such, public interest dictates that every article appearing in the newspaper should subscribe to the standards set by the Inquirer, with its thousands of readers in mind. It is not, therefore, unusual for the Inquirer to control what would be published in the newspaper. What is important is the fact that such control pertains only to the end result, *i.e.*, the submitted articles. The Inquirer has no control over [petitioner] as to the means or method used by her in the preparation of her articles. The articles are done by [petitioner] herself without any intervention from the Inquirer.[34]

Petitioner has not shown that PDI, acting through its editors, dictated how she was to write or produce her articles each week. Aside from the constraints presented by the space allocation of her column, there were no restraints on her creativity; petitioner was free to write her column in the manner and style she was accustomed to and to use whatever research method she deemed suitable for her purpose. The apparent limitation that she had to write only on subjects that befitted the Lifestyle section did not translate to control, but was simply a logical consequence of the fact that her column appeared in that section and therefore had to cater to the preference of the readers of that section.

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[34] Manifestation and Motion of the Office of the Solicitor General, *rollo*, p. 192.

The perceived constraint on petitioner's column was dictated by her own choice of her column's perspective. The column title "Feminist Reflections" was of her own choosing, as she herself admitted, since she had been known as a feminist writer.[35] Thus, respondent PDI, as well as her readers, could reasonably expect her columns to speak from such perspective.

Contrary to petitioner's protestations, it does not appear that there was any actual restraint or limitation on the subject matter – within the Lifestyle section – that she could write about. Respondent PDI did not dictate how she wrote or what she wrote in her column. Neither did PDI's guidelines dictate the kind of research, time, and effort she put into each column. In fact, petitioner herself said that she received "no comments on her articles…except for her to shorten them to fit into the box allotted to her column." Therefore, the control that PDI exercised over petitioner was only as to the finished product of her efforts, *i.e.*, the column itself, by way of either shortening or outright rejection of the column.

The newspaper's power to approve or reject publication of any specific article she wrote for her column cannot be the control contemplated in the "control test," as it is but logical that one who commissions another to do a piece of work should have the right to accept or reject the product. The important factor to consider in the "control test" is still the element of control over how the work itself is done, not just the end result thereof.

In contrast, a regular reporter is not as independent in doing his or her work for the newspaper. We note the common practice in the newspaper business of assigning its regular reporters to cover specific subjects, geographical locations, government agencies, or areas of concern, more commonly referred to as "beats." A reporter must produce stories within his or her particular beat and cannot switch to another beat without permission from the editor. In most newspapers also, a reporter must inform the editor about the story that he or she is working

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[35] Reply to Position Paper of Respondents, CA *rollo*, p. 43.

on for the day. The story or article must also be submitted to the editor at a specified time. Moreover, the editor can easily pull out a reporter from one beat and ask him or her to cover another beat, if the need arises.

This is not the case for petitioner. Although petitioner had a weekly deadline to meet, she was not precluded from submitting her column ahead of time or from submitting columns to be published at a later time. More importantly, respondents did not dictate upon petitioner the subject matter of her columns, but only imposed the general guideline that the article should conform to the standards of the newspaper and the general tone of the particular section.

Where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[36]

Aside from the control test, this Court has also used the economic reality test. The economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties.[37] This is especially appropriate when, as in this case, there is no written agreement or contract on which to base the relationship. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.[38]

Petitioner's main occupation is not as a columnist for respondent but as a women's rights advocate working in various

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[36] *Abante, Jr. v. Lamadrid Bearing and Parts Corporation, supra* note 26, citing *Encyclopedia Britannica (Philippines), Inc. v. NLRC*, 264 SCRA 1, 7 (1996).

[37] *Francisco v. National Labor Relations Commission,* G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697.

[38] *Id.* at 699.

women's organizations.[39] Likewise, she herself admits that she also contributes articles to other publications.[40] Thus, it cannot be said that petitioner was dependent on respondent PDI for her continued employment in respondent's line of business.[41]

The inevitable conclusion is that petitioner was not respondent PDI's employee but an independent contractor, engaged to do independent work.

There is no inflexible rule to determine if a person is an employee or an independent contractor; thus, the characterization of the relationship must be made based on the particular circumstances of each case.[42] There are several factors[43] that may be considered by the courts, but as we already said, the right to control is

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[39] CA *rollo*, p. 200.

[40] Reply to Respondent's Position Paper, CA *rollo*, p. 43.

[41] See *Francisco v. National Labor Relations Commission, supra* note 37.

[42] *Arkansas Transit Homes, Inc. v. Aetna Life & Casualty*, 341 Ark. 317, 16 S.W.3d 545 (2000).

[43] The court in *Arkansas* lists the following factors to be considered in determining whether one is an employee or independent contractor:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

the dominant factor in determining whether one is an employee or an independent contractor.[44]

In our jurisdiction, the Court has held that an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on one's own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.[45]

On this point, *Sonza v. ABS-CBN Broadcasting Corporation*[46] is enlightening. In that case, the Court found, using the four-fold test, that petitioner, Jose Y. Sonza, was not an employee of ABS-CBN, but an independent contractor. Sonza was hired by ABS-CBN due to his "unique skills, talent and celebrity status not possessed by ordinary employees," a circumstance that, the Court said, was indicative, though not conclusive, of an independent contractual relationship. Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees.[47] The Court also found that, as to payment of wages, Sonza's talent fees were the result of negotiations between him and ABS-CBN.[48] As to the power of dismissal, the Court found that the terms of Sonza's engagement were dictated by the contract he entered into with ABS-CBN, and the same contract provided that either party may terminate the contract

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(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.

[44] *Arkansas Transit Homes, Inc. v. Aetna Life & Casualty, supra* note 42.

[45] *Chavez v. National Labor Relations Commission,* G.R. No. 146530, January 17, 2005, 448 SCRA 478, 491, citing *Tan v. Lagrama*, 387 SCRA 393 (2002).

[46] G.R. No. 138051, June 10, 2004, 431 SCRA 583.

[47] *Sonza v. ABS-CBN Broadcasting Corporation*, *id.* at 595.

[48] *Id.* at 595-596.

in case of breach by the other of the terms thereof.[49] However, the Court held that the foregoing are not determinative of an employer-employee relationship. Instead, it is still the power of control that is most important.

On the power of control, the Court found that in performing his work, Sonza only needed his skills and talent – how he delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control.[50] Thus:

> We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZA's work. ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the right to modify the program format and airtime schedule "for more effective programming." ABS-CBN's sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZA's work.
>
> SONZA claims that ABS-CBN's power not to broadcast his shows proves ABS-CBN's power over the means and methods of the performance of his work. Although ABS-CBN did have the option not to broadcast SONZA's show, ABS-CBN was still obligated to pay SONZA's talent fees. Thus, even if ABS-CBN was completely dissatisfied with the means and methods of SONZA's performance of his work, or even with the quality or product of his work, ABS-CBN could not dismiss or even discipline SONZA. All that ABS-CBN could do is not to broadcast SONZA's show but ABS-CBN must still pay his talent fees in full.
>
> Clearly, ABS-CBN's right not to broadcast SONZA's show, burdened as it was by the obligation to continue paying in full SONZA's talent fees, did not amount to control over the means and methods of the performance of SONZA's work. ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work - how he delivered his lines and appeared on television - did not meet ABS-CBN's approval. This proves that ABS-CBN's control was limited only to the result of SONZA's work, whether to broadcast the final product or not. In either case, ABS-

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[49] *Id.* at 597.

[50] *Id.* at 600.

CBN must still pay SONZA's talent fees in full until the expiry of the Agreement.

In *Vaughan, et al. v. Warner, et al.*, the United States Circuit Court of Appeals ruled that vaudeville performers were independent contractors although the management reserved the right to delete objectionable features in their shows. Since the management did not have control over the manner of performance of the skills of the artists, it could only control the result of the work by deleting objectionable features.

SONZA further contends that ABS-CBN exercised control over his work by supplying all equipment and crew. No doubt, ABS-CBN supplied the equipment, crew and airtime needed to broadcast the "Mel & Jay" programs. However, the equipment, crew and airtime are not the "tools and instrumentalities" SONZA needed to perform his job. What SONZA principally needed were his talent or skills and the costumes necessary for his appearance. Even though ABS-CBN provided SONZA with the place of work and the necessary equipment, SONZA was still an independent contractor since ABS-CBN did not supervise and control his work. ABS-CBN's sole concern was for SONZA to display his talent during the airing of the programs.

A radio broadcast specialist who works under minimal supervision is an independent contractor. SONZA's work as television and radio program host required special skills and talent, which SONZA admittedly possesses. The records do not show that ABS-CBN exercised any supervision and control over how SONZA utilized his skills and talent in his shows.[51]

The instant case presents a parallel to *Sonza*. Petitioner was engaged as a columnist for her talent, skill, experience, and her unique viewpoint as a feminist advocate. How she utilized all these in writing her column was not subject to dictation by respondent. As in *Sonza*, respondent PDI was not involved in the actual performance that produced the finished product. It only reserved the right to shorten petitioner's articles based on the newspaper's capacity to accommodate the same. This fact, we note, was not unique to petitioner's column. It is a reality in the newspaper business that space constraints often

[51] *Id.* at 600-603. (Citations omitted.)

dictate the length of articles and columns, even those that regularly appear therein.

Furthermore, respondent PDI did not supply petitioner with the tools and instrumentalities she needed to perform her work. Petitioner only needed her talent and skill to come up with a column every week. As such, she had all the tools she needed to perform her work.

Considering that respondent PDI was not petitioner's employer, it cannot be held guilty of illegal dismissal.

WHEREFORE, the foregoing premises considered, the Petition is *DISMISSED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 50970 are hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 156286. August 13, 2008]

MARITA C. BERNALDO, *petitioner, vs.* **THE OMBUDSMAN and THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE SUPREME COURT; ONLY QUESTION OF LAW SHALL BE RAISED IN AN APPEAL BY *CERTIORARI*; EXCEPTIONS.—

Anent the preliminary matter regarding the mode of appeal to this Court, the principle that only questions of law shall be raised in an appeal by *certiorari* under Rule 45 of the Rules of Court admits of certain exceptions, namely: (1) *when the findings are grounded entirely on speculations, surmises, or conjectures*; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. ID.; EVIDENCE; SUBSTANTIAL EVIDENCE IS ALL THAT IS NEEDED TO SUPPORT AN ADMINISTRATIVE FINDING OF FACT.— It is well-settled that in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order. This Court has consistently held that substantial evidence is all that is needed to support an administrative finding of fact. This is not to say, however, that administrative tribunals may rely on flimsy, unreliable, conjectural evidence. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Where the decision of the Ombudsman is not supported by substantial evidence, but based on speculations, surmises and conjectures, as in the present case, this Court finds sufficient reason to overturn the same.

APPEARANCES OF COUNSEL

Erdulfo Q. Querubin and *Banzon Gloria & Gumban Law Offices* for petitioner.

The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

At bar is a *Petition for Review on Certiorari* under Rule 45 of the Rules of Court, wherein petitioner Marita C. Bernaldo assailed the *Resolution*[1] dated November 13, 2002 and the *Decision*[2] dated January 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65440 (the Assailed Rulings). The Assailed Rulings affirmed the *Orders*[3] dated June 7, 2001 and December 26, 2000 of the Office of the Ombudsman in OMB-ADM-0-93-0411, finding petitioner Bernaldo administratively liable for "conduct grossly prejudicial to the best interest of the service" and ordering her suspension for a period of nine (9) months without pay and other benefits. The respondents, through the Office of the Solicitor General, filed their *Comment*[4] dated June 23, 2003. The petitioner responded with a *Reply*[5] dated November 6, 2003. The parties likewise filed their respective memoranda.

The facts are culled from the records of the case.

The Department of Public Works and Highways (DPWH) had nine (9) river dredging projects in Bataan sometime in 1987 to 1988 which were awarded to various private contractors. Among these projects were the Channel Improvement of Calaguiman River in Samal, Bataan (the Calaguiman River Project); the Channel Improvement of Almacen River I in Hermosa, Bataan (the Almacen River I Project); and the Channel Improvement of Almacen River II also in Hermosa, Bataan (the Almacen River II Project).

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[1] *Rollo*, pp. 46-49.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Eriberto U. Rosario, Jr. and Mariano C. Del Castillo concurring; *id.* at 38-47.

[3] *Id.* at 83-90.

[4] *Id.* at 146-174.

[5] *Id.* at 177-185.

The Almacen River II Project was awarded to L.J. Cruz Construction and contract price of the said project was ₱3,316,231.12. The contractor was allowed to commence work on December 22, 1987 and it reported the project's completion on August 31, 1988. At the time of the reported completion, petitioner Bernaldo was the DPWH Region III Project Engineer for the Almacen River II Project. In a *Statement of Work Accomplished*[6] dated August 31, 1988 and a *Certificate of Final Inspection and Certificate of Final Acceptance*[7] dated September 1, 1988, the Almacen River II Project was certified 100% completed "in accordance with the approved plans and specifications" by the contractor and the DPWH Region III Engineers, namely, Project Engineer — Marita C. Bernaldo, District Engineer — Adolfo M. Flores, Chief of Construction Division — Celestino R. Contreras, Chief of Maintenance Division — Angelito M. Twaño, Chief of Planning and Design Division — Augusto A. Mendoza, Chief of Materials and Quality Control Division — Andrelito P. Tagorda, Assistant Regional Director — Regulo V. Fernandez, and Regional Director — Jose C. Pendoza (collectively, the "DPWH Region III Engineers"). The contractor was eventually paid 93.58% of the contract price.

However, a contrary finding as to the accomplishment of works involving all three projects was reported by a Survey and Investigation Team of the Bureau of Design of the DPWH (the "Survey Team") composed of Felix V. Camaya, Eustacio Y. Cano, and Rogelio A. Hernandez. In its *Field Survey and Investigation Report*[8] dated November 7, 1988, the Survey Team indicated, among others, that the amount of work accomplished by L.J. Cruz Construction on the Almacen River II Project was only about 21% completed. Moreover, in a *Letter-Report*[9] dated May 16, 1989 of DPWH Senior Civil Engineer

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[6] *Id.* at 237.

[7] *Id.* at 236.

[8] Records, Folder 2, pp. 22-24.

[9] *Id.* at 110-111.

Stephen L. David addressed to Special Investigator III Rafael R. Cabigao of the Office of the Ombudsman, the equipment utilized on the Almacen River II Project was evaluated and it was stated therein that the same could not possibly accomplish the reported full completion of the said project.

Based on the foregoing reports, the DPWH Region III Engineers connected with the Calaguiman River, Almacen River I, and Almacen River II Projects were all administratively charged for Falsification, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service before the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman in OMB-ADM-0-93-0411. The *Memorandum*,[10] dated May 5, 1993 of Graft Investigation Officer J. Celrin M. Macavinta of the OMB Task Force on Public Works and Highways, contained the following findings:

x x x x x x x x x

The report of the survey team and the analysis of Engr. David clearly established a clear case of overpayment.**The same also show conspiracy between and among the contractors and the concerned government engineers who allowed the overpayment by issuing certifications indicating that the contractors had completed the project 100%, when in truth and in fact, the contractors had barely accomplished anything.**

Without the said false certifications, no payments could have been made to the conniving contractors. These falsified documents are:

x x x x x x x x x

ALMACEN RIVER PROJECT II

1. **The Statement of Work Accomplished showing that the project was 100% accomplished as of August 31, 1988.** The document was certified to and verified correct by:

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[10] *Id.* at 3-10.

a. **MARITA C. BERNALDO — Project Engineer;**

b. CELESTINO R. CONTRERAS — Chief, Construction Division;

c. LEONARDO J. CRUZ — Contractor;

d. ADOLFO M. FLORES — District Engineer;

e. REGULO V. FERNANDEZ — Assistant Regional Director;

f. JOSE C. PENDOZA — Regional Director.

2. **The Certificate of Final Inspection**. This document certifies that the project was inspected on September 1, 1988 and was found 100% completed by:

a. **MARITA C. BERNALDO — Project Engineer;**

b. ANGELITO TWAÑO — Chief, Maintenance Division;

c. AUGUSTO MENDOZA — Chief, Planning & Design Division;

d. ANDRELITO TAGORDA — Chief, Materials & Quality Control Division;

e. CELESTINO CONTRERAS — Chief, Construction Division; and

f. ADOLFO FLORES — District Engineer.

x x x x x x x x x

Based on the survey, the difference between the actual work accomplished and the total collections of the contractors in the three projects are itemized and computed as follows:

x x x x x x x x x

ALMACEN RIVER PROJECT II

Amount actually Accomplished	Amount Collected by the Contractor	Difference (damage to the government)
21% or ₱733,320	93.58% or ₱3,267,755.61	72.58% or ₱2,534,435.61

x x x x x x x x x
(emphasis supplied)

Adolfo M. Flores, Andrelito P. Tagorda, Angelito M. Twaño, Arsenio R. Flores, Augusto A. Mendoza, and Celestino R. Contreras filed their respective counter-affidavits while petitioner Bernaldo filed a motion to dismiss. Thereafter, the parties presented their evidence.

The complainant DPWH submitted the report of the Survey Team and the letter-report of Engr. David (Exhibit A and submarkings). Engr. Rogelio A. Hernandez[11] and Engr. Eustacio Y. Cano[12] of the survey team testified for the complainant. On the other hand, the respondent DPWH Region III Engineers presented the *Counter-Affidavits*[13] of Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores (Exhibits 1 to 5 and submarkings); a *Letter-Receipt*[14] dated November 9, 1989 of Aurora G. Banaag (Exhibit 6); a *Status Report*[15] dated August 15, 1988 for the Almacen River II Project (Exhibit 7); an *Affidavit*[16] dated December 20, 1987 of Leonardo R. Cruz, Sr. (Exhibit 8); a *Status Report*[17] dated August 15, 1988 for the Calaguiman River Project (Exhibit 9); and the *1988 Tropical Cyclone Summary*[18] (Exhibit 10). Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores testified for the respondents.

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[11] TSN dated October 5, 1994.

[12] TSN dated October 19, 1994.

[13] Records, Folder 3.

[14] Records, Folder 5, p. 56.

[15] *Id.*, p. 57.

[16] Records, Folder 3, p. 51.

[17] *Id.*, p. 58.

[18] *Id.*, pp. 59-62.

The case was submitted for decision after the reception of evidence of the parties. The AAB recommended the dismissal of the complaint against the DPWH Region III Engineers, including petitioner Bernaldo, for insufficiency of evidence. However, in an *Order* dated December 26, 2000, Ombudsman Aniano A. Desierto disapproved the recommendation of the AAB and, instead, found the DPWH Region III Engineers administratively liable for "conduct grossly prejudicial to the best interest of the service."

The Ombudsman rejected the defenses of the respondents that: (a) the strong magnitude of waves caused the continuous sedimentation of the Calaguiman River, Almacen River I and Almacen River II dredging sites during the months following the projects' completion and prior to the Survey Team's inspection; and (b) the letter-report of Engr. David merely speculated that there were two (2) cranes used on these projects. In the said Order, the Ombudsman collectively blamed the respondents for not ascertaining "by simple arithmetical computation the maximum volume of work that can be accomplished within a given period of time and given the number of dredging equipments used" by which they could have discovered that the contractors bloated the volume of excavated materials. Thus, the respondent DPWH Region III Engineers, including petitioner Bernaldo, were ordered suspended for a period of nine (9) months without pay and other benefits.

In an *Order* dated June 7, 2001, the Ombudsman denied the separate motions for reconsideration of the respondents, stressing their responsibility and the participation of petitioner Bernaldo in the purported bloating of the completion of the projects.To quote from the said Order:

x x x x x x x x x

Substantial evidence exists in the premises to hold respondents ARSENIO FLORES, CELESTINO CONTRERAS, ENGELITO (sic) TWAÑO, ANDRELITO TAGORDA, and MARITA BERNALDO

administratively liable for conduct prejudicial to the best interest of the service.

x x x x x x x x x

Per evaluation and computation of the capability of the equipments used made by DPWH Senior Civil Engr. Stephen David, it was impossible for the contractors to have accomplished the volume of works reported to have been accomplished. Far from being speculative, Engr. David's reports is borne out not only by the Programs of Works (which reflect that two (2) hydraulic cranes were used for the dredging of Almacen River while one (1) dredger and one (1) hydraulic crane were used for the dredging of Calaguiman River) but also by the testimony of respondent Adolfo Flores during the formal hearing held on 16 March 1995 that a total of four (4) cranes were used for the Almacen River Projects I & II while one (1) dredger and one (1) hydraulic crane were used for the Calaguiman River Project (TSN of the 16 March 1995, pp. 61 and 67).

The findings of Engr. David may still be given weight notwithstanding the fact that he was not presented as a witness. In administrative proceedings, technical rules of procedure and evidence are not strictly applied (*Concerned Officials of the MWSS v. Vasquez*, 240 SCRA 502).

x x x x x x x x x

The participation of respondent Bernaldo in the bloating of accomplishment reports for Almacen River Project II and the resultant overpayment to its contractor cannot be overemphasized. She was a signatory to the SWA and the Certificate of Final Inspection. As correctly argued by her co-respondents (although their argument does not excuse their own conduct), respondent Bernaldo had the primary and direct responsibility for the implementation of Almacen River Project II as its Resident/Project Engineer.

x x x x x x x x x

The DPWH Region III Engineers individually elevated for review before the CA the findings of the Office of the Ombudsman. The appeal of Arsenio R. Flores was docketed as CA-G.R. SP No. 65606; the joint appeal of Angelito M.

Twaño and Andrelito P. Tagorda was docketed as CA-G.R. SP No. 65544; and the appeal of petitioner Bernaldo was docketed as CA-G.R. SP No. 65440. In a *Decision* dated July 5, 2002 of the CA involving Arsenio R. Flores, the petition was granted and the assailed orders of the Office of the Ombudsman were annulled and set aside. The same conclusion was reached by the CA in the case of Angelito M. Twaño and Andrelito P. Tagorda in a *Decision* dated August 23, 2002. Both decisions of the CA pointed out that the reports of the Survey Team and Engr. David were insufficient to hold the engineers administratively liable. However, the CA ruled differently in the case of petitioner Bernaldo. In its *Decision* dated January 31, 2002 and *Resolution* dated November 13, 2002 in CA-G.R. SP No. 65440, the CA held that the factual findings of the Office of the Ombudsman were supported by substantial evidence to hold petitioner Bernaldo administratively liable. Hence, the instant petition for *certiorari*.

In the petition, Bernaldo claims that the letter-report of Engr. David is hearsay and self-serving since complainant DPWH failed to present Engr. David to testify on his purported evaluation on the Almacen River II Project. She further argues that the findings of Engr. David were not founded on actual facts but solely on his imagined perceptions of what could have happened in the implementation and accomplishment of the projects. She points out the rulings of the CA in the appeals of Arsenio R. Flores, Angelito M. Twaño and Andrelito P. Tagorda that the conclusions made by Engr. David in his letter-report were based on assumptions and perceptions. She likewise contends that the change in the condition at the time the Almacen River II Project was reported as completed as compared to the state of the project at the time it was inspected by the Survey Team months thereafter deserves serious consideration in determining whether the alleged completion of the said project was in fact bloated. Petitioner Bernaldo finally asserts that these findings dwell on the same factual issues raised before the CA which

already attained finality and, therefore, should be taken into account in the adjudication of her administrative charge.

The respondents, through the Solicitor General, argue that the instant petition raises questions of fact which is beyond the scope of Rule 45 of the Rules of Court; that the rulings of the CA in the appeal of Arsenio R. Flores and joint appeal of Angelito M. Twaño and Andrelito P. Tagorda have no bearing upon this case; that there is substantial evidence proving the administrative guilt of petitioner Bernaldo for conduct prejudicial to the best interest of the service; and that the technical rules of procedure are not strictly adhered in administrative proceedings so the admission of the letter-report of Engr. David against petitioner Bernaldo does not amount to her denial of administrative due process.

We find merit in the petition.

Anent the preliminary matter regarding the mode of appeal to this Court, the principle that only questions of law shall be raised in an appeal by *certiorari* under Rule 45 of the Rules of Court admits of certain exceptions,[19] namely: (1) *when the findings are grounded entirely on speculations, surmises, or conjectures*; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

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[19] *Uy v. Villanueva*, 526 SCRA 73.

To be sure, when the lower court or the administrative tribunal fails to take into account certain relevant facts which, if properly considered, would justify a different conclusion is likewise an accepted exception to the prescription under Rule 45.[20]

In the petition at bar, the Ombudsman's factual finding that the percentage of completion of the Almacen River II Project has been bloated in the *Statement of Work Accomplished* and the *Certificate of Final Inspection and Certificate of Final Acceptance* signed by petitioner is not supported by substantial evidence but, rather, grounded on unreliable, speculative evidence which may be susceptible to a different interpretation.

The Ombudsman's finding of administrative liability of respondent DPWH Region III Engineers was based mainly on two documents: (a) the Field Survey and Investigation Report dated November 7, 1988 of the Survey Team and (b) the Letter-Report dated May 16, 1989 of Engr. Stephen L. David.

However, it should be noted that the November 7, 1988 report[21] of the Survey Team does not state that unsatisfactory condition of the dredging projects was due to the failure of the contractors to complete them. It is apparent from the overall observation of the Survey Team that the continuous sedimentation of the dredging sites due to "strong magnitude of stream waves and tidal effects of the delta areas" may have caused the destruction of works involved in the projects. To quote from said report:

The following are the dredging and improvement projects in the area:

1. Channel Improvement of Tortugas, River, Balanga, Bataan;
2. Channel Improvement of Abucay River, Bataan;
3. Channel Improvement of Calaguiman River, Samal, Bataan;

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[20] *Orquiola v. Court of Appeals*, 386 SCRA 301.

[21] *Supra* note 8.

4. Channel Improvement of Almacen River I, Hermosa, Bataan;
5. **Channel Improvement of Almacen River II, Hermosa, Bataan;**
6. Channel Improvement of Wawa River, Pilar, Bataan;
7. Channel Improvement of San Vicente River, Orion, Bataan;
8. Channel Improvement of Orani River, Orani, Bataan; and
9. Channel Improvement of Puerto Rivas River, Balanga, Bataan.

FINDINGS:

x x x x x x x x x

2. Some reclaimed areas near the vicinities of the rivers were filled with dredge materials and spoils taken from the excavated channel beds.
3. Most of the materials excavated from the rivers were composed of washed sand, sandy clay, sediment discharge, silt and garbage materials.
4. No permanent shore protections were constructed except in Puerto Rivas River where the existing retaining wall was extended few meters downstream.
5. Temporary shore protections made up of bamboo poles and *sawali* with very limited lengths were installed along some portions of the banks of Tortugas, **Almacen I & II**, Wawa and Abucay rivers utilizing the project savings for the bunk houses and risk insurances. **These protective works were damaged to a great extent due to strong magnitude of stream waves and tidal effects of the delta areas**.

x x x x x x x x x

8. **That almost all of the stream/river beds of the subject channels were silted, eroded, and filled with garbage materials.**
9. Based on the result of our survey/investigation, it was observed that the present conditions of all the channels concerned do not meet the requirements and specifications called for the efficient and profitable use of the streams.

COMMENTS AND RECOMMENDATIONS:

1. The Programs of Work were prepared with insufficient data on hand.

2. **The construction of temporary stream and shore protections did not effectively serve the purpose. These works were affected by strong currents and sea waves, causing destruction.**

3. That river protections and river training works be undertaken in all the subject rivers before any dredging/deepening works be implemented. This must be included in the program of work and cost estimates.

4. That feasibility studies be made before any detailed engineering and construction and/or dredging works are done, including among others the hydrologic and geologic aspects of the area under consideration.

x x x x x x x x x x x x

8. **That some measures be initiated in the removal of accumulated materials which are the results of the continuous sedimentation, soil erosion and siltation in the area.**

9. That hydrological analysis be undertaken before any channel design is made. These will determine the flood frequencies for the required return periods of flood designs necessary for channel improvements and dredging works.

10. That additional hydrolographic and topographic surveys of the subject streams and their estuaries extending at least one kilometric seawards be undertaken preparatory to the design and estimates of the channels to be improved.

x x x x x x x x x x x x

The signatories to the above-quoted report included Engr. Rogelio A. Hernandez and Engr. Eustacio Y. Cano, who were both presented as witnesses by complainant DPWH during the hearings before the AAB. Engr. Hernandez and Engr. Cano of the Survey Team both testified that the continuous

sedimentation, soil erosion, or siltation of the rivers could have wiped out traces of the dredging projects. The relevant portions of their testimonies are reproduced below:

From the testimony of Engr. Hernandez:[22]

Q- And, how come there was an observation of "strong magnitude of stream waves." What do you mean by this in layman's term, Mr. Witness, "and tidal effects of the delta areas"?

A- When we went on that particular projects (sic), your Honor, we were offered . . . and observed that those protective works were already damaged to a great extent and we were told that it was destroyed by strong river waves.

Q- **So, you mean to say, Mr. Witness, considering that the waves are very strong and the tidal effects are very substantial, can we stipulate, Mr. Witness, that this has also affected the spoils that were taken out of the river? Is there a possibility, Mr. Witness? That's why when you went to that area, you saw only these much spoils that you have in these projects because of the strong magnitude of stream waves and tidal effects.**

A- **Yes.**

Q- I think, this is connected with — In comments, and Recommendations No. 2, "the construction of temporary streams and shore protections did not effectively serve the purpose. These works were affected by strong currents and sea waves, causing destruction." So, when you say, "causing destruction", these currents are not just ordinary everyday currents but extra-ordinary, causing destruction. Am I right, Mr. Witness?

A- Yes.

Q- And in No. 8, Mr. Witness — "That some measures be initiated in the removal of accumulated materials which are the results of continuous sedimentation, soil erosion and siltation in the area." **So, Mr. Witness, am I right stating that there are continuous sedimentation, continuous soil erosion, continuous siltation in the area even after the implementation of the projects?**

A- **Yes, your Honor.**

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[22] TSN dated October 5, 1994, pp. 32-34.

Q- **So, that means to say, if you go there, after a few months after the project had already been completed, is it possible that you will see as if nothing has happened because of the continuous sedimentation, continuous siltation, continuous erosion? So, we can now conclude that nothing happened, only 1% of the project was accomplished? Is it possible?**
A- **There is a possibility.**

From the testimony of Engr. Cano:[23]

Q- So, what Mr. Hernandez has surveyed during that time was only what he had seen after several months the project was accomplished.
A- That was very true.

Q- And that the scenario of the project which was there when you conducted the survey is very much dissimilar, is not the same as what the project was accomplished. Is that right?
A- In all cases, definitely, it will not appear the same.

xxx xxx xxx

Q- So, there are also projects, Mr. Witness, that there's a possibility that it has been 100% accomplished but due to the elements of nature, due to water, erosion, there's a possibility sometimes when you go there for . . . almost as if nothing had happened in the project because there was no soil protection?
A- That is very true by nature and then by gravity until erosion.

xxx xxx xxx

Q- A project claimed to have been 100% completed, upon your survey, was determined that it was only 1.13% done. Now, as a hydrologist, is it possible for this figure to be correct, from 100% to 1.13%?
A- As far as the completion of the project on the hydrological aspect, we can say that it is 100% but after sometime, due to the effect of nature, the sediment, this will be possible to be offset.

Q- Is this possible?
A- Yah, as far as hydrology is concerned, by reason of sedimentation and sediment transport, erosion and wave movement.

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[23] TSN dated October 19, 1994, pp. 9-10, 20-22.

Q- After examining many projects, have you come across another project which have (sic) the same result?
A- Yah. Sometimes, even less than this.

Q- Sometimes, less than this? What do you mean by that?
A- None at all.

Q- You mean, the project claimed to have been completed, *wala na talaga*? After how many . . . in this project, this is Almacen River, Phase I, by the conditions of the river itself, could this possibly happen to this river?
A- Very much possible.

Q- How come? How could you explain?
A- Because I undertook actual observation.

Q- Of the river itself?
A- Yah, of the movement of the sediments from the mountain upstream going to the downstream of the river. That was my observation.

Q- How do you describe the movement of the tide of the river?
A- Inasmuch as the material contents of that river at that time, mostly gravel and white sand and some other sediments, the movement was very much faster.

x x x x x x x x x

Q- You said that it is possible, even with the volume of 60,656 cubic meters? 60,656.35, it is the quantity programmed.
A- Yah, it will be possible because of, as I have said, my observation that the material was mostly sand.

Q- For how long?
A- Even in a matter of month —

Q- One month?
A- Yah, specially, if there are heavy rains, like typhoons.

x x x x x x x x x

Clearly from the foregoing, the prosecution's own witnesses confirmed that the Survey Team conducted its inspection only months after the questioned completion of the projects. Moreover,

they testified that it was quite possible that the projects were completed but the seeming deficiency of work they found during their inspection was due to the continuous sedimentation, soil erosion, or siltation of the rivers or the destruction of works by heavy rains or typhoons.

The letter-report of Engr. David similarly does not prove that the Almacen River II Project was not fully completed as of August 31, 1988, as reported in the SWA and Certificates of Final Inspection and Acceptance. The hypothetical and speculative nature of said letter-report is evident in the following excerpts:

Sir:

In compliance to your directive to study/evaluate the pertinent document regarding the **Channel Improvement of Almacen River [II],** a dredging project in Hermosa, Bataan, I am hereby submitting my report/observation:

x x x x x x x x x

2. The first partial collection was made on December 19, 1987; seven (7) days after the issuance of the Notice to Proceed dated December 22, 1987. It involved 13,380 cu. m. of excavation, and bunk house worth ₱30,000.00. **If the contractor used two (2) cranes on barge (it was alleged that the contractor has only two cranes on barge) with a capacity of 19.5 cu.m. hr./crane for seven days, each crane must operate for not less than 49 hrs./day.** Since a day consists only of 24 hrs. this collection is quite impossible.

3. After the third collection dated April 19, 1988, a total volume of 53,523 cu. m. was excavated. This corresponds to 40.14% accomplishment as stipulated in the approved contract.

4. As of July 31, 1988, the accomplished work is still 40.14%.

5. Fourth partial collection was made on August 14, 1988. Since the accomplishment remained 40.14% as of July 31, 1988, [this] collection must cover only 14 days (August 1-14, 1988). **Based on the recorded payment to the contractor, the volume**

excavated was 68,250 cu. m. Using the same computation, each crane must operate for not less than 125 hrs./day. Again, this is impossible.

6. On August 31, 1988, the final collection was made. This covered 28,186.50 cu. m. excavation for a period of 17 days. **From the same computation, each crane must operate for not less than 42,51 hrs./day.**

7. The project was reported to be 100% accomplished as of Final Collection dated August 31, 1988. **Whereas, on the verified accomplishment dated November 7, 1988, only a total of 31,217 cu. m. was done or 21% of total work.**

x x x x x x x x x

It is obvious from the language of the above-quoted letter-report of Engr. David that his mathematical computations of the amount of work completed by the contractor were based on an **assumption** that only two cranes were used for the project. There is no evidence on record that only two cranes were **actually** used in the said project. The Ombudsman's finding that the *Program of Works* corroborates Engr. David's assumption that only two cranes were used cannot be upheld by this Court, considering that the undated *Program of Works* appears to be a mere estimate of the costs of the project as approved by the DPWH. The *Program of Works* does not preclude the possibility that more than two cranes may have been in fact used for the project. Thus, Engr. David's conclusion that the equipments utilized on the project could not possibly accomplish the amount of work as reported was hypothetically based and purely speculative. In addition, Engr. David clearly did not take into account the effect of the continuous sedimentation, soil erosion or siltation of the river during these months after the reported completion of the project and prior to the Survey Team's inspection. Finally, this Court finds that the said letter-report is of suspect authenticity and credibility, considering that it was not under oath nor did Engr. David, who was not presented as a witness, ever attest to its contents.

Furthermore, the fact that petitioner Bernaldo, as Project Engineer, had over-all supervision and responsibility over the

Almacen River II Project does not justify a different treatment of her case from those of her co-respondents. Here, the complainant/prosecution in the administrative case failed to discharge its burden to prove the fact of "bloating" or overstatement of the percentage of completion of the said project which purportedly led to overpayments to the contractor. Thus, there is no factual basis to find petitioner guilty of "conduct grossly prejudicial to the best interest of the service."

It is well-settled that in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order.[24] This Court has consistently held that substantial evidence is all that is needed to support an administrative finding of fact.[25] This is not to say, however, that administrative tribunals may rely on flimsy, unreliable, conjectural evidence. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[26] Where the decision of the Ombudsman is not supported by substantial evidence, but based on speculations, surmises and conjectures, as in the present case, this Court finds sufficient reason to overturn the same.

WHEREFORE, in view of the foregoing, the instant petition is hereby *GRANTED*. The *Resolution* dated November 13, 2002 and *Decision* dated January 31, 2002 of the CA in CA-G.R. SP No. 65440 as well as the *Orders* dated June 7, 2001 and December 26, 2000 of the Office of the Ombudsman in OMB-ADM-0-93-0411 are hereby *REVERSED* and *SET ASIDE*. No Costs.

SO ORDERED.

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

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[24] *Energy Regulatory Board v. Court of Appeals*, 357 SCRA 30.

[25] *Id.*

[26] *Velazquez v. Hernandez*, 437 SCRA 357.

THIRD DIVISION

[G.R. No. 162253. August 13, 2008]

MARINERS POLYTECHNIC COLLEGES FOUNDATION, INC., *petitioner, vs.* **ARTURO J. GARCHITORENA,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; CONTENTS OF PETITION; SUBSTANTIAL COMPLIANCE; SUSTAINED.— There is sufficient compliance with Section 3 of Rule 46 of the Rules of Court. x x x *Atillo v. Bombay* is instructive. The Court in interpreting a similar provision in the Rules of Court gave the following observations: The mandatory tenor of Section 2(d), Rule 42 with respect to the requirement of attaching clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts is discernible and well settled. In this case, the mandatory or directory nature of the requirement with respect to the attachment of pleadings and other material portions of the record is put in question. The phrase **"of the pleadings and other material portions of the record"** in Section 2(d), Rule 42 is followed by the phrase **"as would support the allegations of the petition"** clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. x x x . **The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein.** In the case at bar, we find that the documents attached to the petition sufficiently supported the allegations therein. The attached LA decision made reference to the position papers of both parties in stating the factual antecedents of the case. Likewise, it embodied the cause of action of the complainant as well as the arguments of both parties. Annexed to the Memorandum of Appeal of the petitioner are the (1) Service Contract signed by the petitioner and the respondent, and (2) a copy of the workload of the complainant. The LA decision and the Memorandum of Appeal including its annexes obviated the need for the petitioner to attach the complaint and the position papers

of the parties. Furthermore, the NLRC decision and the petitioner's Motion for Reconsideration discussed the grounds for appeal and the arguments raised therein.

APPEARANCES OF COUNSEL

Carpio & General Law Office and *Duran Narvaez & Associates* for petitioner.

Legacion & Escueta-Legacion for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and annul the December 5, 2003 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 80719 and its Resolution[2] dated January 29, 2004.

The Facts

The facts as stated in the Resolution[3] of the National Labor Relations Commission (NLRC) are as follows:

Complainant was hired as a college instructor by respondent [herein petitioner] school way back in June 1986. After two years of full time teaching complainant went on leave of absence to go abroad in November 1988. When he came back in June 1992, he applied again in respondent school as a college instructor and was accepted. Since then he had continuously taught in the school. However, he alleged that without any cause or reason given to him for the first semester of school year 1997- 1998 he was not given his regular load. When complainant inquired from the Dean of the College why he was not

[1] Penned by Associate Justice Salvador J. Valdes, Jr. and concurred in by Justice Josefina Guevara-Salonga and Justice Arturo D. Brion (now a Member of this Court), *rollo*, pp. 23-24.

[2] *Id*. at 25-28.

[3] CA *rollo*, p. 51.

given his regular teaching load, the Dean advised complainants to see the Executive Vice-President of the school, Ms. Melissa Jimenez Ampuan, who according to complainant, just casually told him to "take a rest" or in Bicol dialect "*Magpahingalo ka muna*."

Hence, the instant complaint alleging that he was illegally dismissed.

x x x x x x x x x[4]

The Labor Arbiter (LA) ruled in favor of the complainant. The LA held that the complainant was a regular employee and not a probationary employee as alleged by the petitioner. Thus, complainant could only be dismissed for cause and with due process. The LA ruled, to wit:

We are not persuaded that complainant was a mere probationary employee as shown by a Service Contract executed sometime on November 11, 1996, hence deemed a part-time instructor. The aforesaid contract notwithstanding, complainant admittedly is a classroom instructor or teacher in respondents' Marine Engineering Department. He was engaged to perform activities, which are usually necessary or desirable in the usual business or trade of respondent as an education institution. His regular employment for a considerable length of time with respondent from 1986 and thereafter to be converted into a probationary employment in the second semester of School Year 1996-1997, is definitely a diminution of a worker's rank and benefits which is frowned upon by our law and the Constitution.

Besides, **when complainant was rehired in 1992 he was not made to sign a Service Contract that he should undergo a probationary employment**, instead he was considered and certified as a full-time instructor, apparently because of his teaching competence which had already been tried and tested, thus commended as having performed "very satisfactorily". He reentered the service in 1992 as a regular or permanent teacher. As such, he could not now be discharged solely on account of the expiration of her [sic] alleged Service Contract. He could only be dismissed for cause and with due process, as provided by Article 279 of the Labor Code.

On the issue of dismissal, the evidence adduced by the respondents shows that indeed they deliberately refused to provide complainant

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[4] CA *rollo*, pp. 53-54.

with any teaching load comes the 1st Semester of School Year 1997-1998. Their justification on this regard were herein quoted as follows:

> With a heavy heart, Ms. Ampuan did not renew anymore the service contract of the complainant for the following semester (first semester, SY 1997-1998). Her intention was to allow the complainant to go on vacation for one semester, or sort of allowing him to 'unwind' as she was suspecting that the complainant was 'burning out' on the stress of the job as a teacher. That was the reason why Ms. Ampuan told the complainant to rest for a while ('*magpahingalo ka muna*').
>
> Clearly the non-renewal of the service contract of the complainant as claimed by the respondent was without any prior notice, neither was the complainant given the opportunity to explain, if ever, there is something to be 'unwind' where respondents considered complainant to have been 'burned out'. x x x[5] (Emphasis supplied)

The NLRC affirmed the decision of the LA. The NLRC in its decision ruled that since the complainant was rehired in 1992, it made him a regular teacher.[6] Moreover, the evidence presented by the complainant showing his teaching load since 1992 to 1997 very clearly showed that he was a full-time instructor.[7]

In addition, the NLRC affirmed the finding of the LA that when the complainant was rehired in 1992 he was not made to sign a service contract; thus, he was considered and certified as a full-time instructor who could only be dismissed for cause and with due process.[8] In addition, the NLRC held that the petitioner failed to substantiate with evidence the alleged complaints against complainant to merit his dismissal.[9]

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[5] *Rollo*, pp. 9-11.

[6] *Id*. at 85.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 85-86.

Petitioner's Motion for Reconsideration was denied by the NLRC. It then appealed the decision to the CA *via* a Petition for *Certiorari*[10] under Rule 65 of the Rules of Court.

The Court of Appeals Ruling

The CA dismissed the petition outright, to wit:

> The instant Petition for *Certiorari* being defective in that the complaint; the parties' respective position papers filed with the Labor Arbiter to which are usually attached their evidence; and the Reply, if any, to each other's position papers are not attached thereto, the same is DISMISSED outright.
>
> SO ORDERED.[11]

Furthermore, the CA disposed of respondent's Motion for Reconsideration in the following fashion:

> WHEREFORE, for utter failure of the petitioner to comply with Section 3, Rule 46 of the aforesaid Rules (Rules of Court), the instant motion is DENIED for lack of merit.
>
> SO ORDERED.[12]

Hence, herein petition.

The Issues

Petitioner raises the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS CORRECTLY DISMISSED THE PETITION OUTRIGHT FOR FAILURE TO APPEND TO ITS PETITION "THE COMPLAINT, THE PARTIES RESPECTIVE POSITION PAPERS FILED WITH THE LABOR ARBITER OF WHICH ARE USUALLY ATTACHED THEIR EVIDENCE, AND THE REPLY, IF ANY, TO EACH, OTHERS POSITION PAPERS."

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, CORRECTLY DISMISSED THE PETITION

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[10] *Id*. at 29-45.

[11] *Rollo*, p. 23.

[12] *Id*. at 27.

OUTRIGHT AND DENIED THE MOTION FOR RECONSIDERATION BY APPLYING STRICTLY TECHNICAL RULES OF PROCEDURE.[13]

The Court's Ruling

The petition is meritorious. There is sufficient compliance with Section 3 of Rule 46 of the Rules of Court. The CA dismissed the petition before it for failure of petitioner to submit a copy of the complaint, the position papers of the parties and the reply if any.

Petitioner argues that it has substantially complied with the requirements of Section 3 of Rule 46 of the Rules of Court when it attached the following documents to its petition before the CA: (1) the LA decision, (2) its Memorandum of Appeal, (3) the NLRC decision, (4) its Motion for Reconsideration, and (5) the decision of the NLRC denying its Motion for Reconsideration. Moreover, it argues for the Rule's subjective tenor and therefore asks for judicial prudence.

Pertinent portions of the Rule are reproduced hereunder:

SEC. 3. Contents and filing of petition; effect of noncompliance with requirements. — x x x

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and *shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof,* ***such material portions of the record as are referred to therein and other documents relevant or pertinent thereto***. x x x. (Emphasis supplied)

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

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[13] Memorandum, pp. 153-163.

Atillo v. Bombay[14] is instructive. The Court in interpreting a similar provision in the Rules of Court[15] gave the following observations:

The mandatory tenor of Section 2(d), Rule 42 with respect to the requirement of attaching clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts is discernible and well settled. In this case, the mandatory or directory nature of the requirement with respect to the attachment of pleadings and other material portions of the record is put in question.

The phrase "**of the pleadings and other material portions of the record**" in Section 2(d), Rule 42 is followed by the phrase "**as would support the allegations of the petition**" clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. x x x. **The crucial issue to consider then is whether or not the documents**

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[14] 404 Phil. 179 (2001).

[15] THE RULES OF COURT, Rule 42, Section 2, provides as follows:

SEC. 2. *Form and Contents.* - The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) *be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition*. (Emphasis ours)

Non-compliance with any of the foregoing requisites is a ground for the dismissal of a petition based on Section 3 of the same Rule, *viz*:

Sec. 3. *Effect of failure to comply with requirements.* - The failure of petitioner to comply with any of the foregoing requisites regarding the payment of, the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

accompanying the petition before the CA sufficiently supported the allegations therein.[16] (Emphasis supplied)

In the case at bar, we find that the documents attached to the petition sufficiently supported the allegations therein. The attached LA decision made reference to the position papers of both parties in stating the factual antecedents of the case. Likewise, it embodied the cause of action of the complainant as well as the arguments of both parties. Annexed to the Memorandum of Appeal of the petitioner are the (1) Service Contract signed by the petitioner and the respondent, and (2) a copy of the workload of the complainant. The LA decision and the Memorandum of Appeal including its annexes obviated the need for the petitioner to attach the complaint and the position papers of the parties. Furthermore, the NLRC decision and the petitioner's Motion for Reconsideration discussed the grounds for appeal and the arguments raised therein.

In addition, the main issue raised in the petition for *certiorari* filed with the CA is whether the complainant was a part-time employee or a regular employee. Had the CA given due course to the petition, it would necessarily resolve whether the NLRC committed grave abuse of discretion in affirming the LA in the face of the Service Contract signed by the complainant in 1992 which was attached to the petition for *certiorari* that the CA erroneously dismissed outright. We reiterate that the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case.[17]

WHEREFORE, the assailed Resolutions of the Court of Appeals are *SET ASIDE*. The case is *REMANDED* to the CA for further proceedings and appropriate action.

No costs.

SO ORDERED.

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

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[16] *Atillo v. Bombay*, *supra* note 14, at 368-369.

[17] *Cusi-Hernandez v. Diaz*, 390 Phil. 1245, 1252 (2000).

SECOND DIVISION

[G.R. No. 163208. August 13, 2008]

HEIRS OF JUAN VALDEZ, SPS. POTENCIANO MALVAR and LOURDES MALVAR, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and L.C. LOPEZ RESOURCES, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION OF NON-FORUM SHOPPING; NON-COMPLIANCE THEREOF; WHEN SUFFICIENT TO DISMISS PETITION; JUSTIFIED. – We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack or excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "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". On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum shopping, "shall be sufficient ground for the dismissal of the petition". Thus, the Ninth Division correctly dismissed the petition *without prejudice*.

2. ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE IN THE INTEREST OF JUSTICE; WHEN ALLOWED. – That the CA could also require the respondents to comment, with the obligation on the part of the petitioner to undertake rectification, is not without support from established jurisprudence. In several cases, we allowed initiatory pleadings or petitions with initially defective verifications and certifications of non-forum shopping on the ground of substantial compliance. We reasoned that

strict compliance with the requirement merely underscores its mandatory nature, in that, it cannot be dispensed with or its requirements altogether disregarded. Thus, we have held that the subsequent submission of the required documents (such as the secretary's certificate) constituted substantial compliance with the procedural rules that justified relaxation of the requirements in the interest of justice.

3. ID.; ID.; JUDGMENT; MISTAKE MADE BY THE COURT; THERE CAN BE NO DEFINITE RESOLUTION THAT COULD LAPSE TO FINALITY BECAUSE OF THE MISTAKE THAT THE COURT HAS COMMITTED; PRESENT IN CASE AT BAR. – To our mind, it is important to make this determination to establish that *other than the CA's mistake in releasing two conflicting resolutions* in the same case and on the same date, the CA action was legally above board. This determination is particularly material for purposes of the grave abuse of discretion the petitioners impute against the Court of Appeals for issuing two conflicting resolutions in initially acting on the case. In the absence of any showing that the twin issuance was attended by partiality, or by hostility to one party as against another, or in open and patent disregard of the applicable laws, no grave abuse of discretion amounting to lack or excess of jurisdiction exists in the CA action. The twin issuance was, as the CA Ninth Division admitted, the result of a mistake. The exercise of discretion in the CA's action came into play in the consideration of what action to take in light of the deficiency in the petition's certification against forum shopping. That a resolution that was not intended to be issued, was issued, does not at all involve an exercise of discretion, much less its abuse. *Because the mistake was on the part of the court, it is axiomatic that none of the parties should suffer for the mistake*. This is particularly true given that the parties all acted pursuant to the resolution they respectively received. To be sure, Lopez Resources could have filed a motion for reconsideration upon its receipt of the resolution of dismissal on May 9, 2003. The option it took, however, was well within the legitimate choices it had and could not be legally faulted; it accepted the dismissal and chose to re-file its petition, this time supplying the deficiency that tainted its first petition. We note in this regard that the re-filing was done on May 23, 2003, *i.e.*, prior to the finality of the resolution of dismissal. This prompt action indicates to us that while the

order of dismissal technically lapsed to finality, such finality is in fact legally immaterial since Lopez Resources immediately acted on the condition that attended the dismissal, *i.e.* to re-file the petition because the dismissal was without prejudice. By this act, Lopez Resources effectively kept its petition legally alive. To look at the matter from another perspective, the issuance of two conflicting resolutions — one for dismissal, the other for the continuation of the case, with one canceling out the other — can only mean that no definite, specific determination was made by the court; at least, there was uncertainty on what the court really intended to do. Under this situation, we find it fallacious to conclude that one resolution lapsed to finality while the other did not. In legal effect, there was effectively no definite resolution that could have lapsed to finality because of the mistake the court committed. This status continued until a clarification was made by the issuing court.

4. ID.; ID.; ID.; IMMUTABILITY OF JUDGMENT; WHEN NOT APPLICABLE. – The rule on immutability of judgment does not apply in cases where what is to be modified or altered involves: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (c) void judgments [such as a dismissal without prejudice that was not intended to be issued] and those where circumstances transpire after the finality that render the execution or enforcement, as in this case, of the judgment unjust or inequitable. To be sure, the rule does not apply in cases where a supervening event — such as the mistake undisputably committed by the court (*i.e.*, the unintended release of one of the resolutions, thus resulting in the conflict and confusion) — took place.

5. ID.; ID.; ID.; CONSOLIDATION; APPLICATION THEREOF BY ANALOGY; JUSTIFIED. – Faced with the mistake it committed, the CA readily acknowledged its lapse and acted to rectify it through its August 1, 2003 order. That CA-G.R. No. SP 76286 remained the viable case is only to be expected because it is the "mother" case that inadvertently gave rise to the re-filed case. This can best be understood from the point of view of, and *applying by analogy*, the rules on consolidation which Rule 31 of the Revised Rules of Court provides. Under the *Internal Rules of the Court of Appeals*, there may be

consolidation at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties when the cases involve the same parties and/or related questions of fact and/or law. *Consolidated cases shall pertain to the Justice to whom the case with the lowest docket number is assigned, if they are of the same kind.* Consolidation has to apply by analogy because of the unusual attendant circumstances that required that the re-filed case be collapsed, not merely consolidated, to form an integral part of the first petition. For all the foregoing reasons and the fact the CA can issue such orders or resolutions necessary in the exercise of its jurisdiction, we hold that the Ninth Division's clarificatory resolution of August 1, 2003 is valid. The CA never lost jurisdiction over the case despite the re-filing of the petition; jurisdiction, once acquired, is not lost except for reasons that are not present in this case and need not be fully discussed here. The Sixth Division, to where the *ponente* of the re-filed petition was transferred, ultimately removed all uncertainties when it ordered the cancellation of the raffle of the case and ordered the incorporation of the contents of its rollo with the *rollo* of the first petition — CA-G.R. SP No. 76286. This move is likewise valid under the circumstances as the re-filing was a direct off-shoot of the CA's mistake; it carries the same justification attendant to the remedial measures addressing the mistake.

APPEARANCES OF COUNSEL

Angeles & Associates for petitioners.
Gerodias Suchiangco Estrella for private respondent.

D E C I S I O N

BRION, *J.*:

Two conflicting resolutions were issued on the same date in the same case. The first resolution dismissed the case without prejudice for violation of the provision against forum shopping. The other required the respondent (*petitioner* herein) to comment. **What is the effect, under the unique circumstances of this case, of these twin resolutions?**

This is the question that the petitioners Heirs of Juan Valdez, Spouses Potenciano Malvar and Lourdes Malvar (*heirs and spouses Malvar*) pose for our consideration in this Petition for Review on *certiorari* under Rule 45 of the Rules of Court after the Court of Appeals (*CA*) ruled that CA-G.R. SP No. 76286 that the private respondent (petitioner at the CA, and referred to herein as *"Lopez Resources"*) filed, was not effectively dismissed.

The heirs and spouses Malvar seek to reverse the following resolutions in the following cases filed by Lopez Resources before the CA:

(a) In CA-G.R. SP No. 76286 -

(1) Resolution dated May 5, 2003[1] (*first May 5, 2003 Resolution*) which dismissed without prejudice the petition for *certiorari* and prohibition on the ground that the verification and certification against forum shopping was not signed by a duly authorized representative of L.C. Lopez Resources;

(2) Resolution dated May 5, 2003[2] (*second May 5, 2003 Resolution)* which required the heirs and spouses Malvar to file their comment to CA-G.R. SP No. 76286 and Lopez Resources to rectify the deficiency in its non-forum shopping certification;

(3) Resolution dated August 1, 2003[3] (*August 1, 2003 Resolution)* which clarified the conflicting May 5, 2003 resolutions, directing the heirs and spouses Malvar to file their comment on CA-G.R. SP No. 76286 within ten days, and Lopez Resources to file its reply to the comment.

(4) Resolution dated April 2, 2004[4] (*April 2, 2004 Resolution)* which denied the motion for reconsideration

[1] *Rollo*, pp. 30-31.

[2] *Id.,* pp. 33-34.

[3] *Id.,* pp. 36-37.

[4] *Id.,* pp. 39.

filed by the heirs and spouses Malvar of the Resolution dated December 12, 2003 that granted them 10 days from notice to file their comment; and

(b) In CA-G.R. SP No. 77615 -

(5) Resolution dated July 15, 2003[5] (*July 15, 2003 Resolution)* requiring the heirs and spouses Malvar to comment on the petition for *certiorari* and prohibition and Lopez Resources to file its reply to the comment.This resolution ordered Lopez Resources to submit a true copy of the May 5, 2003 Resolution dismissing its petition in CA-G.R. SP No. 76286.

THE ANTECEDENTS

Controversy has its roots in Civil Case No. 00-6015 (*civil case*) entitled, "*Manila Construction Development Corporation of the Philippines v. Spouses Dela Rosa, et al.*"- an action for quieting of title and declaration of nullity of transfer certificates of title before the Regional Trial Court (*RTC*), Branch 71 of Antipolo City.[6] The heirs and spouses Malvar were among the plaintiffs[7] in the civil case. The RTC granted them an injunction order (*order)* dated December 16, 2002 and, subsequently, a *writ* of preliminary mandatory injunction (*writ)* dated March 6, 2003 to place them in possession of the parcel of land disputed in the case.[8] On March 24, 2003, the sheriff of the RTC together with several armed men implemented the order and *writ* in Lopez Resources property; they tore down

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[5] *Id.,* pp. 72-73.

[6] See pp.1-4 of herein private respondent's Petition for *Certiorari* and Prohibition (*With Application for the Issuance of a Writ of Preliminary Injunction And/Or Temporary Restraining Order)*; *rollo*, pp. 47-67.

[7] The parties who filed complaints-in-intervention (with application for *writ* of preliminary mandatory injunction) were North East Property Ventures, Spouses Potenciano Malvar and Lourdes Malvar and Spouses Juan Valdez and Apolinaria Valdez. The spouses Valdez' are represented in this petition by the heirs of Juan Valdez.

[8] *Rollo*, p.48

the fence that enclosed the Lopez property although Lopez Resources succeeded in maintaining possession.

Lopez Resources went to the CA to question the application of the order and writ that the RTC issued in the civil case. Its petition for *certiorari* and prohibition was docketed as CA-G.R. SP No. 76286 (*first petition*) and was assigned to the Ninth Division.[9] For the reasons detailed below, Lopez Resources filed another similar petition (*re-filed petition*) – docketed as CA-G.R. SP No. 77615 and assigned to the Seventh Division[10] – after the first petition was dismissed without prejudice.

Proceedings in CA-G.R. SP No. 76286

Lopez Resources filed this petition for *certiorari* and prohibition before the CA on April 3, 2003, alleging grave abuse of discretion and the commission of acts without or in excess of jurisdiction by the RTC when it deprived Lopez Resources of its property without due process of law; Lopez Resources was not a party in Civil Case No. 00-6015 where the assailed order and *writ* were granted; also, the *writ* was enforced against Lopez Resources' property although this property was not a part of the land disputed in the civil case.[11]

In its first action on the first petition, the CA issued on May 5, 2003 the disputed conflicting resolutions. As previously mentioned, one resolution dismissed the petition *without prejudice* for violation of the provision against forum shopping, while the other required the heirs and spouses Malvar and other respondents to file their comments to the petition while also requiring Lopez Resources to rectify the deficiency in its non-forum shopping certification.

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[9] Comprised of Associate Justice Bernie Adefuin-de la Cruz, Associate Justice Perlita Tria-Tirona (both retired), and Associate Justice Hakim Abdulwahid (as *ponente*).

[10] Comprised of Associate Justice Ruben T. Reyes (now a member of this Court), Associate Justice Elvi John Asuncion and Associate Justice Lucas Bersamin.

[11] Comment/Opposition (*Re: Petition for Review dated 26 May 2004)*, pp. 3-4; *rollo*, pp. 101-102.

Lopez Resources and the heirs and spouses Malvar received the resolution of dismissal but the heirs and spouses Malvar's co-respondents did not. Lopez Resources received the resolution on May 9, 2003 and re-filed the same petition with appropriate correction of the non-forum shopping deficiency on May 23, 2003. The re-filed petition was docketed as *CA-G.R. SP No. 77615* and was raffled to the Seventh Division of the CA.

CA records show that the spouses Malvar's co-respondents who did not receive the first May 5, 2003 resolution, received the second May 5, 2003 Resolution requiring them to comment on the Lopez Resources petition.

Because of the conflict in the contents of the two May 5, 2003 resolutions, the CA issued on August 1, 2003 (or 86 days after the issuance of the conflicting resolutions) a Resolution clarifiying its action in CA-G.R. SP No. 76286 and rectifying what it labeled as a 'clerical error'. This resolution states:

> It was also brought to Our attention by the Division Clerk, after scrutiny of the records, that there has been a clerical error in what was supposed to be delivered as thin copies for the three (3) thick copies of the Resolution We actually promulgated on May 5, 2003 x x x The inadvertently delivered thin copy of the said resolution received by the petitioner's counsel was the one dismissing the petition without prejudice, and the same copy pertained to the draft resolution which We did not approve. The copy of the resolution received by private respondent Cristeta dela Rosa's counsel is the one requiring comment and which corresponds to Our actual Resolution dated May 5, 2003.
>
> The foregoing explains why there is a re-filing of the petition with this Court, because of the inadvertently delivered copy of the draft resolution received by the petitioner, dismissing the case without prejudice. As such, the error needs to be rectified since the petition docketed as CA-G.R. SP No. 77615 is actually the same as the case at bar.[12]

The Ninth Division duly furnished the *ponente* of the re-filed petition (from the Seventh Division) a copy of its August 1, 2003 resolution.

[12] August 1, 2003 Resolution; *id.*, p. 37.

The heirs and spouses Malvar subsequently sought a reconsideration of another resolution from the Ninth Division dated December 12, 2003 that, among others, granted them 10 days to file their comment. The CA denied the motion in its April 2, 2004 Resolution in light of its August 1, 2003 Resolution.

Proceedings in CA-G.R. SP No. 77615

In response to the first May 5, 2003 Resolution dismissing its petition without prejudice, Lopez Resources opted to re-file on May 23, 2003 a similar petition with corrections duly made for the non-forum shopping deficiency in the first petition. The Seventh Division, to which the re-filed petition was raffled, required the heirs and spouses Malvar and the other respondents to file their comment to the re-filed petition, while Lopez Resources was ordered to submit a copy of the first May 5, 2003 Resolution dismissing CA- G.R. SP No. 76286.

In lieu of comment,[13] the heirs and spouses Malvar moved for the dismissal of the petition on two grounds: *first*, the CA has no jurisdiction over the re-filed petition as an exact petition in CA-G.R. SP No. 76286 was earlier dismissed under the first May 5, 2003 Resolution and the dismissal had become final; and *second*, even if the CA had jurisdiction, the re-filed petition should be dismissed by reason of *litis pendentia* because the appellate court has not terminated the proceedings in the first petition.

Subsequently, the CA[14] resolved to cancel the raffle of CA-G.R. SP No. 77615[15] since the first petition and the re-filed petition are one and the same. The CA also ordered that the contents of the *rollo* of CA-G.R. SP No. 77615 to be incorporated with the *rollo* of CA-G.R. SP No. 76286.

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[13] Comment on the Petition; *id.*, pp. 74-84.

[14] The Sixth Division to where the *ponente*, Justice Ruben T. Reyes (now of the Supreme Court) transferred.

[15] Resolution dated August 31, 2004; *id.*, pp. 190-191.

THE ISSUES

Dissatisfied with the above CA resolutions and arguing that both cases should be dismissed, the petitioners raise the following issues:

1. whether the CA committed grave abuse of discretion in CA-G.R.SP No. 76286 when it issued on the same date the two conflicting May 5, 2003 resolutions;
2. whether the August 1, 2003 resolution is valid; and
3. whether the refiling of the same petition before the CA constituted a palpable act of forum shopping justifying the dismissal of both petitions.

THE COURT'S RULING

We deny the petition for lack of merit.

The fact that the Ninth Division of the CA committed a monumental error cannot be erased. But the error was not in the court's intent on what to do with the forum shopping violation it found. In both resolutions, what is clear is that the court intended to allow a rectification of the deficiency in Lopez Resources' non-forum shopping certification in view perhaps of what it perceived to be the merits that the face of the petition showed. Thus, in the first May 5, 2003 resolution, the CA resolved to dismiss the petition but without prejudice to its re-filing. In the second resolution, it ordered the filing of comment by the respondents, with the obligation on the part of Lopez Resources to rectify the deficiency in its non-forum shopping certification.

We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack or excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "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." On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum shopping, "shall be sufficient ground for the dismissal of the petition". Thus, the Ninth Division correctly dismissed the petition *without prejudice*.

That the CA could also require the respondents to comment, with the obligation on the part of the petitioner to undertake rectification, is not without support from established jurisprudence. In several cases,[16] we allowed initiatory pleadings or petitions with initially defective verifications and certifications of non-forum shopping on the ground of substantial compliance.[17] We reasoned that strict compliance with the requirement merely underscores its mandatory nature, in that, it cannot be dispensed with or its requirements altogether disregarded.[18] Thus, we have held that the subsequent submission of the required documents (such as the secretary's certificate) constituted substantial compliance with the procedural rules that justified relaxation of the requirements in the interest of justice.[19]

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[16] *Vicar International Construction, Inc. v. FEB Leasing and Finance Corp.*, G.R. No. 157195, April 22, 2005, 456 SCRA 588, 596-597; *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 455 SCRA 328, 337; *Huntington Steel Products, Inc. v. NLRC*, G.R. No. 158311, November 17, 2004, 442 SCRA 551, 559; *General Milling Corp. v. NLRC*, G.R. No. 153199, December 17, 2002, 394 SCRA 207, 209; *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 346; *Loyola v. Court of Appeals*, G.R. No. 117186, June 19, 1995, 245 SCRA 447, 483.

[17] *Young v. Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 641.

[18] *Ibid*, citing *Loyola v. Court of Appeals*, *supra* note 16, pp. 483-484.

[19] *Wack-wack Golf & Country Club v. NLRC*, G.R. No. 149793, April 15, 2005, 456 SCRA 280, 294, citing *Jaro v. Court of Appeals*, 277 SCRA 282 (2002).

Thus, either way, the CA would have been correct. To our mind, it is important to make this determination to establish that *other than the CA's mistake in releasing two conflicting resolutions* in the same case and on the same date, the CA action was legally above board. This determination is particularly material for purposes of the grave abuse of discretion the petitioners impute against the Court of Appeals for issuing two conflicting resolutions in initially acting on the case. In the absence of any showing that the twin issuance was attended by partiality, or by hostility to one party as against another, or in open and patent disregard of the applicable laws, no grave abuse of discretion amounting to lack or excess of jurisdiction exists in the CA action. The twin issuance was, as the CA Ninth Division admitted, the result of a mistake. The exercise of discretion in the CA's action came into play in the consideration of what action to take in light of the deficiency in the petition's certification against forum shopping. That a resolution that was not intended to be issued, was issued, does not at all involve an exercise of discretion, much less its abuse.

Because the mistake was on the part of the court, it is axiomatic that none of the parties should suffer for the mistake. This is particularly true given that the parties all acted pursuant to the resolution they respectively received. To be sure, Lopez Resources could have filed a motion for reconsideration upon its receipt of the resolution of dismissal on May 9, 2003. The option it took, however, was well within the legitimate choices it had and could not be legally faulted; it accepted the dismissal and chose to re-file its petition, this time supplying the deficiency that tainted its first petition. We note in this regard that the re-filing was done on May 23, 2003, i.e., prior to the finality of the resolution of dismissal. This prompt action indicates to us that while the order of dismissal technically lapsed to finality, such finality is in fact legally immaterial since Lopez Resources immediately acted on the condition that attended the dismissal, i.e. to re-file the petition because the dismissal was without prejudice. By this act, Lopez Resources effectively kept its petition legally alive.

To look at the matter from another perspective, the issuance of two conflicting resolutions – one for dismissal, the other for the continuation of the case, with one canceling out the other – can only mean that no definite, specific determination was made by the court; at least, there was uncertainty on what the court really intended to do. Under this situation, we find it fallacious to conclude that one resolution lapsed to finality while the other did not. In legal effect, there was effectively no definite resolution that could have lapsed to finality because of the mistake the court committed. This status continued until a clarification was made by the issuing court.

Even granting that the first May 5, 2003 Resolution became final and executory, the rule on immutability of judgment does not apply in cases where what is to be modified or altered involves: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (c) void judgments [such as a dismissal without prejudice that was not intended to be issued] and those where circumstances transpire after the finality that render the execution or enforcement, as in this case, of the judgment unjust or inequitable.[20] To be sure, the rule does not apply in cases where a supervening event - such as the mistake undisputably committed by the court (i.e., the unintended release of one of the resolutions, thus resulting in the conflict and confusion) - took place.[21]

Faced with the mistake it committed, the CA readily acknowledged its lapse and acted to rectify it through its August 1, 2003 order. That CA-G.R. No. SP 76286 remained the viable case is only to be expected because it is the "mother" case that inadvertently gave rise to the re-filed case. This can best be understood from the point of view of, and *applying by analogy*, the rules on consolidation which Rule 31 of the Revised Rules of Court provides. Under the *Internal Rules of the Court of Appeals*, there may be consolidation at the instance of the

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[20] *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586,599.

[21] *Natalia Realty Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387.

Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties when the cases involve the same parties and/or related questions of fact and/or law. *Consolidated cases shall pertain to the Justice to whom the case with the lowest docket number is assigned, if they are of the same kind*.[22] Consolidation has to apply by analogy because of the unusual attendant circumstances that required that the re-filed case be collapsed, not merely consolidated, to form an integral part of the first petition.

For all the foregoing reasons and the fact the CA can issue such orders or resolutions necessary in the exercise of its jurisdiction, we hold that the Ninth Division's clarificatory resolution of August 1, 2003 is valid. The CA never lost jurisdiction over the case despite the re-filing of the petition; jurisdiction, once acquired, is not lost except for reasons that are not present in this case and need not be fully discussed here. The Sixth Division, to where the *ponente* of the re-filed petition was transferred, ultimately removed all uncertainties when it ordered the cancellation of the raffle of the case and ordered the incorporation of the contents of its *rollo* with the *rollo* of the first petition - CA-G.R. SP No. 76286. This move is likewise valid under the circumstances as the re-filing was a direct off-shoot of the CA's mistake; it carries the same justification attendant to the remedial measures addressing the mistake.

The question of whether Lopez Resources forum shopped when it re-filed its petition is largely rendered moot and academic by the terms of the assailed May 5, 2003 order which dismissed the case without prejudice. Lopez Resources, who cannot be blamed for the CA's mistake, only followed what the assailed order allowed. Thus, we cannot say that it forum shopped by filing another petition while the first petition was pending. Insofar as it was concerned, its first petition had been dismissed without prejudice; hence, there was no bar, either by way of forum

[22] See: Section 3, Rule 3 of the Internal Rules of the Court of Appeals.

shopping, *litis pendentia* or res adjudicata, to the petition it re-filed.[23] We note that it has not been lacking in good faith in its dealing with the appellate court in this regard. After its re-filed petition and after receipt of the August 1, 2003 Resolution of the Ninth Division, it immediately filed on August 12, 2003 a Manifestation and Motion for Clarification to seek guidance on which of the two petitions should subsist. In an abundance of caution, it likewise filed on August 21, 2003 a Manifestation and Compliance in the first petition, attaching therewith the Secretary's Certificate that the second May 5, 2003 Resolution required. It cannot be blamed if it acted with utmost caution as the circumstances under which it found itself were highly unusual and were not at all within the direct contemplation of the Rules.

As a final note, we cannot help but be disturbed by the carelessness exhibited in the handling of the conflicting May 5, 2003 resolutions. Had the CA exercised due care and attention in the performance of their duties, the present petition would have been avoided. Truly, as public officers, we are bound by our oath to bring to the discharge of our duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs.[24] To do less affects not only the substance of our actions, but the all-important perception of the public we serve of the kind of justice we dispense. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the people manning the courts – from the justices, judges, the clerks of court, to the lowest-ranked personnel. It is the duty of each one of us to maintain the judiciary's good name and standing as a true temple of justice.[25]

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[23] *Times Transit Co., Inc. v. Sotelo,* G.R. No. 163786, February 16, 2005, 451 SCRA 587, 598, and *Development Bank of the Philippines v. La Campana Development Corp.,* G.R. No. 137694, January 17, 2005, 448 SCRA 384, 392.

[24] *Ulat-Marrero v. Torio, Jr.*, A.M. No. P-01-1519, November 19, 2003, 416 SCRA 177, 183.

[25] *Id.*

WHEREFORE, in light of the foregoing, we hereby **DENY** the petition and **DIRECT** the Court of Appeals to resolve the petition for *certiorari* and prohibition in CA-G.R. SP No. 76286 with utmost dispatch. No costs.

SO ORDERED.

*Quisumbing, Corona, * Carpio-Morales* and *Velasco, Jr. JJ.,* concur.

THIRD DIVISION

[G.R. No. 163210. August 13, 2008]

LEPANTO CONSOLIDATED MINING COMPANY, *petitioner, vs.* **MORENO DUMAPIS, ELMO TUNDAGUI and FRANCIS LIAGAO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES ARE NOT BOUND BY THE TECHNICALITIES AND RULES OBTAINING IN COURTS OF LAW; JUSTIFIED.— Administrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Indeed, the Revised Rules of Court and prevailing jurisprudence may be given only stringent application, *i.e.*, by analogy or in a suppletory character and effect. In a number of cases, this Court has construed Article 221 of the Labor Code as permitting the NLRC or the LA to decide a case on the basis of position papers and other documents submitted without necessarily resorting to technical rules of evidence as observed in the regular courts of justice. Rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC. In *Bantolino v. Coca-Coca Bottlers Phils., Inc.* the Court ruled that although the affiants had not been presented

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* Designated Additional Member of the Second Division per Special Order No. 512 date July 16, 2008.

to affirm the contents of their affidavits and be cross-examined, their affidavits may be given evidentiary value; the argument that such affidavits were hearsay was not persuasive. Likewise, in *Rase v. National Labor Relations Commission*, this Court ruled that it was not necessary for the affiants to appear and testify and be cross-examined by counsel for the adverse party. To require otherwise would be to negate the rationale and purpose of the summary nature of the proceedings mandated by the Rules and to make mandatory the application of the technical rules of evidence.

2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE DISTINGUISHED FROM PROBATIVE VALUE THEREOF.— [T]he admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. The distinction is clearly laid out in *Skippers United Pacific, Inc. v. National Labor Relations Commission*. In finding that the Report of the Chief Engineer did not constitute substantial evidence to warrant the dismissal of Rosaroso, this Court ruled: According to petitioner, the foregoing Report established that respondent was dismissed for just cause. The CA, the NLRC and the Labor Arbiter, however, refused to give credence to the Report. **They are one in ruling that the Report cannot be given any probative value as it is uncorroborated by other evidence and that it is merely hearsay, having come from a source, the Chief Engineer, who did not have any personal knowledge of the events reported therein.** x x x The CA upheld these findings, succinctly stating as follows: Verily, the report of Chief Engineer Retardo is utterly bereft of probative value. It is not verified by an oath and, therefore, lacks any guarantee of trusthworthiness. **It is furthermore, and this is crucial, not sourced from the personal knowledge of Chief Engineer Retardo.** It is rather based on the perception of "ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY [sic] ON DISCIPLINE" who "NOTICED 3/E ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES

x x x." **Accordingly, the report is plain hearsay. It is not backed up by the affidavit of any of the "Supt." Engineers who purportedly had first-hand knowledge of private respondents supposed "lack of discipline," "irresponsibility" and "lack of diligence" which caused him to lose his job.** x x x

3. ID.; ID.; EVIDENCE PRESENTED BEFORE ADMINISTRATIVE BODIES MUST AT LEAST HAVE A MODICUM OF ADMISSIBILITY FOR IT TO HAVE PROBATIVE VALUE; ABSENCE THEREOF IN THE CASE AT BAR.— While it is true that administrative or quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. The evidence presented must at least have a modicum of admissibility for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Thus, even though technical rules of evidence are not strictly complied with before the LA and the NLRC, their decision must be based on evidence that must, at the very least, be substantial. x x x In labor cases, in which technical rules of procedure are not to be strictly applied if the result would be detrimental to the workingman, an affidavit of desistance gains added importance in the absence of any evidence on record explicitly showing that the dismissed employee committed the act which caused the dismissal. Accordingly, the Court cannot turn a blind eye and disregard Madao's recantation, as it serves to cast doubt as to the guilt of respondent Liagao. Based on the foregoing, the Court is convinced that the Joint Affidavit, being sourced from Chambers, Damoslog, Daguio and Madao, has no probative value to support evidence to warrant the dismissal of the respondents. Chambers and Daguio did not identify the miners involved in the act of highgrading. In addition, Damoslog's first and second sworn statements did not implicate respondents, and Madao recanted his statement implicating respondent Liagao. As earlier discussed, the sworn statements and joint affidavits of the sources do not corroborate but actually cast doubt as to the veracity of the statements in the Joint Affidavit.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE AS GROUND, WHEN VALID; NOT APPLICABLE IN THE CASE AT BAR.— The right of an employer to dismiss an employee on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause. In order that loss of trust and confidence may be considered as a valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work. In the present case, the Court reiterates that the evidence is **not substantial** to hold respondents guilty of highgrading so as to warrant the dismissal of respondents. Moreover, it is a well-settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail themselves of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; EXPLAINED.— Under the doctrine of conclusiveness of judgment, which is also known as "reclusion 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. Applied to the present case, the "former suit" refers to CA-G.R. SP No. 75457 wherein the CA ordered separation pay instead of reinstatement and G.R. No. 162554 wherein this Court denied the petition for review filed by respondents together with other dismissed workers. The "future case" is the present case in which the petitioner is Lepanto Consolidated Mining Company assailing the validity of the CA Decision declaring the dismissal of respondents to be illegal. Reinstatement was not an issue raised by herein petitioner. Respondents cannot now be allowed to raise the same in the petition filed by petitioner, for that would circumvent the finality of judgment as to separation pay insofar as respondents are concerned.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro & Vladimir B. Bumatay for petitioner.
Domogan Law Office for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the November 7, 2003 Decision[1] and April 15, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 75860.

The antecedents of the case are as follows:

Lepanto Consolidated Mining Corporation (petitioner), a domestic juridical entity engaged in mining, employed Moreno Dumapis and Elmo Tundagui as lead miners; and Francis Liagao, as load, haul and dump (LHD) machine operator (respondents).[3] All three were assigned at the 850 level, underground, Victoria Area in Lepanto, Mankayan, Benguet. This is a known "highgrade" area where most of the ores mined are considered of high grade content.[4]

In the afternoon of September 15, 2000, at 2:00 p.m., Dwayne Chambers (Chambers), one of its foreign consultants who was then acting as Assistant Resident Manager of the Mine, went underground at the 850 level to conduct a routinary inspection of the workers and the working conditions therein. When he went to the various stopes of the said level, he was surprised to see that nobody was there. However, when he went to the 8k stope,

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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*, pp. 9-19.

[2] *Id.* at 20-21.

[3] *Id.* at 10.

[4] *Rollo*, p. 27.

he noticed a group of workers sitting, sorting, and washing ores believed to be "highgrade." Realizing that "highgrading"[5] was being committed, Chambers shouted. Upon hearing his angry voice, the workers scampered in different directions of the stope.[6] Chambers then reported the incident to the security investigation office.[7]

After investigating, Security Investigators Paul Pespes, Jr. and Felimon Ringor (Security Investigators) executed a Joint Affidavit, which reads as follows:

x x x x x x x x x

At about 3:40 PM of September 15, 2000, while we were at the Lepanto Security Investigation office, we received a report that the LMD Asst. Resident Manager, **Mr. Dwayne Chambers saw and surprised several unidentified miners** at 8K Stope, 850 level committing Highgrading activities therein;

Consequently, all miners assigned to work therein including their supervisor and **SG Ceasarion Damoslog**, an element of the Mine Security Patrol posted therein as stationary guard were called to this office for interrogation regarding this effect;

In the course of the investigation, we eventually learned that the highgrading event really transpired somewhere at the roadway of 8K Stope, 850 level at about 2:00 o'clock PM of September 15, 2000. That the involved participants were all miners assigned to work at 7K Stope, 8K Stope, 240 E, Cross Cut South level drive, all located at 850 mine level. Likewise, the detailed stationary guard assigned thereat and some mine supervisors were also directly involved in this activity;

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[5] Presidential Decree No. 581, Section 1: Any person who shall take gold-bearing ores or rocks from a mining claim or mining camp or shall remove, collect or gather gold-bearing ores or rocks in place or shall extract or remove the gold from such ores or rocks, or shall prepare and treat such ores or rocks to recover or extract the gold contents thereof, without the consent of the operator of the mining claim, shall be guilty of "highgrading" or theft of gold x x x.

[6] *Rollo*, p.10.

[7] *Id.* at 27.

Security Guard Ceasarion Damoslog honestly confessed his direct participation then claimed that he was allegedly convinced by Mr. Joel Gumatin, one of the miners assigned at Panel No.1-est-North, 8K Stope, 850 level to cooperate with them to commit Highgrading. **He revealed his companions to be all the miners assigned at 8K stope, namely**, Joel Gumatin, Brent Suyam, Maximo Madao, **Elmo Tundagui** and Daniel Fegsar. He also included those who were assigned to work at 240 E, XCS, namely: Thomas Garcia (immediate supervisor), John Kitoyan, **Moreno Dumapis**, and Marolito Cativo. He enumerated also messrs. Benedict Arocod, Samson Damian, and Dionisio Bandoc, 7K Stope, 850 level assigned miners and shiftboss, respectively;

Mr. Pablo Daguio, the shiftboss of 240 E, XCS, 850 level also **positively confirmed the Highgrading activity**. He added that actually he came upon the group and even dispersed them when he went therein prior to the arrival of Mr. Chambers;

Furthermore, we also learned from the **confession of Mr. Maximo Madao** that its was messrs. Joel Gumatin and Brent Suyam who took their issued rock drilling machine then drilled holes and blasted the same at the 8K Stope roadway with the **assistance of** Thomas Garcia, John Kitoyan, Benedict Arocod, Samsom Damian, Daniel Fegsar and **Francisco Liagao**. That SG Ceasarion Damoslog was present on the area standing and watching the group during the incident;

That we are executing this joint affidavit to establish the foregoing facts and to support any complaint that may be filed against respondents;

IN WITNESS WHEREOF, we have hereunto set our hands and affix our signature this 28th day of September 2000, at Lepanto, Mankayan, Benguet.[8] (Emphasis supplied)

On October 24, 2000, petitioner issued a resolution finding respondents and their co-accused guilty of the offense of highgrading and dismissing them from their employment.[9]

On November 14, 2000, respondents together with the nine other miners, filed a Complaint for illegal dismissal with the Labor Arbiter (LA), docketed as NLRC Case No. 11-0607-00

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[8] *Rollo,* p. 177.

[9] *Id.* at 183-185.

against petitioner.[10] On August 21, 2001, the LA dismissed the complaint for lack of merit.

On September 22, 2001, the miners appealed the decision of the LA to the National Labor Relations Commission (NLRC). On August 30, 2002, the NLRC rendered a Decision, declaring the dismissal of herein respondents as illegal, but affirming the dismissal of the nine other complainant miners. The dispositive portion of the NLRC Decision insofar as respondents are concerned, reads:

> WHEREFORE, premises considered, the DECISION dated August 21, 2001 is hereby MODIFIED declaring the dismissal of complainants [herein respondents] Moreno Dumapis, Elmo Tundagui and Francis Liagao illegal and ordering respondent to pay them backwages in the total amount of four hundred eighty thousand one hundred eighty two pesos and 63/100 (₱480, 182.63) and separation pay in the total amount of four hundred seventeen thousand two hundred thirty pesos and 32/100 (₱417,230.32) as computed in the body of the decision.
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> x x x x x x x x x
>
> SO ORDERED.[11]

Petitioner filed a motion for reconsideration which was denied for lack of merit by the NLRC in its Resolution dated on November 22, 2002.[12]

Petitioner then filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA assailing the aforementioned decision and resolution of the NLRC. The CA affirmed the decision of the NLRC[13] and denied petitioner's Motion for Reconsideration.

Hence, herein petition on the following grounds:

> **THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE NATIONAL**

[10] *Id.* at 210-221.

[11] *Rollo*, p. 67.

[12] *Id.* at 70.

[13] *Id.* at 9-19.

LABOR RELATIONS COMMISSION'S DECISION DATED AUGUST 30, 2002 WHICH DECLARED AS ILLEGAL THE DISMISSAL FROM SERVICE OF HEREIN RESPONDENTS.[14]

A. The Court of Appeal's strict application of the hearsay rule under Section 36, Rule 130 of the Rules of Court to the present case is uncalled for.

B. In cases of dismissal for breach of trust and confidence, proof beyond doubt is not required, it being sufficient that the employer has reasonable ground to believe that the employees are responsible for the misconduct which renders them unworthy of the trust and confidence demanded by their position.[15]

The petition is devoid of merit.

In finding the dismissal of respondents illegal, the CA upheld the NLRC in considering the Joint Affidavit of the Security Investigators (Joint Affidavit) as hearsay and therefore inadmissible, to wit:

> We subscribed to the conclusion of the NLRC that the Joint Affidavit of Security Investigators Paul D. Pespes, Jr. and Felimon Ringor is hearsay and thus, inadmissible. Their narration of factual events was not based on their personal knowledge but on disclosures made by Chambers and Daguio. Section 36, Rule 130 of the Rules of Court defined the nature of hearsay:
>
> Witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his own perception, except as otherwise provided in these rules.[16]

Arguing for the admissibility of the Joint Affidavit, petitioner cites Article 221 of the Labor Code, as amended, which provides:

> Article 221. Technical rules not binding and prior resort to amicable settlement. **In any proceeding before the Commission or any Labor Arbiters, the rules of evidence prevailing in courts of law or equity**

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[14] *Id.* at 31.

[15] *Rollo*, p. 31.

[16] *Id.* at 52.

shall not be controlling and it is the spirit and intention of the Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and **without regard to the technicalities of law or procedure**, all in the interest of due process. x x x (Emphasis supplied)

We agree with the petitioner.

Administrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Indeed, the Revised Rules of Court and prevailing jurisprudence may be given only stringent application, *i.e.*, by analogy or in a suppletory character and effect.[17]

In a number of cases,[18] this Court has construed Article 221 of the Labor Code as permitting the NLRC or the LA to decide a case on the basis of position papers and other documents submitted without necessarily resorting to technical rules of evidence as observed in the regular courts of justice. Rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC.[19]

In *Bantolino v. Coca-Coca Bottlers Phils., Inc*.[20] the Court ruled that although the affiants had not been presented to affirm the contents of their affidavits and be cross-examined, their affidavits may be given evidentiary value; the argument that such affidavits were hearsay was not persuasive. Likewise, in *Rase v. National Labor Relations Commission*,[21] this Court ruled that it was not necessary for the affiants to appear and testify and be cross-examined by counsel for the adverse party. To require otherwise would be to negate the rationale and purpose

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[17] *Bantolino v. Coca-Cola Bottlers, Phils.*, G.R. No. 153660, June 10, 2003, 403 SCRA 699, 704.

[18] *Robusta Agro Marine Products, Inc. v. Gorobalem*, G.R. No. 80500, July 5, 1989, 175 SCRA 93; *Sevillana v. I.T. Corp*., 408 Phil. 570 (2001).

[19] *Bantolino v. Coca-Cola Bottlers, Phils., supra* note 17, at 703.

[20] *Bantolino v. Coca-Cola Bottlers, Phils., id.*

[21] G.R. No. 110637, October 7, 1994, 237 SCRA 523, 534.

of the summary nature of the proceedings mandated by the Rules and to make mandatory the application of the technical rules of evidence.

Thus, the CA and the NLRC erred in ruling that the Joint Affidavit is inadmissible for being hearsay. The Joint Affidavit of the Security Investigators is admissible for what it is, an investigation report.

However, the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[22] Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[23] The distinction is clearly laid out in *Skippers United Pacific, Inc. v. National Labor Relations Commission*.[24] In finding that the Report of the Chief Engineer did not constitute substantial evidence to warrant the dismissal of Rosaroso, this Court ruled:

> According to petitioner, the foregoing Report established that respondent was dismissed for just cause. The CA, the NLRC and the Labor Arbiter, however, refused to give credence to the Report. **They are one in ruling that the Report cannot be given any probative value as it is uncorroborated by other evidence and that it is merely hearsay, having come from a source, the Chief Engineer, who did not have any personal knowledge of the events reported therein**.
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> x x x x x x x x x
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> The CA upheld these findings, succinctly stating as follows:
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> Verily, the report of Chief Engineer Retardo is utterly bereft of probative value. It is not verified by an oath and, therefore, lacks

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[22] *PNOC Shipping & Transport Corporation v. Court of Appeals*, 358 Phil. 38 (1998).

[23] *PNOC Shipping & Transport Corporation v. Court of Appeals, supra* note 22, at 59.

[24] G.R. No. 148893, July 12, 2006, 494 SCRA 661.

any guarantee of trusthworthiness. **It is furthermore, and this is crucial, not sourced from the personal knowledge of Chief Engineer Retardo.** It is rather based on the perception of "ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY [sic] ON DISCIPLINE" who " NOTICED 3/E ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES x x x." **Accordingly, the report is plain hearsay. It is not backed up by the affidavit of any of the "Supt." Engineers who purportedly had first-hand knowledge of private respondents supposed "lack of discipline," "irresponsibility" and "lack of diligence" which caused him to lose his job**. x x x

The Courts finds no reason to reverse the foregoing findings.[25] (Emphasis supplied)

While it is true that administrative or quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. The evidence presented must at least have a modicum of admissibility for it to have probative value.[26] Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla.[27] It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[28] Thus, even though technical rules of evidence are not strictly complied with before the LA and the NLRC, their decision must be based on evidence that must, at the very least, be substantial.[29]

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[25] *Skippers United Pacific, Inc. v. National Labor Relations Commission, id.* at 666.

[26] *Uichico v. National Labor Relations Commission*, 339 Phil. 242, 251 (1997).

[27] *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 200.

[28] *Gelmart Industries (Phils.), Inc. v. Leogardo, Jr.*, G.R. No. 70544, November 5, 1987, 155 SCRA 403.

[29] *Ang Tibay v. Commissioner of Internal Revenue*, 69 Phil. 635 (1940).

Pursuant to the aforementioned doctrines, we now look into the probative weight of the Joint Affidavit.

An examination of the Joint Affidavit reveals that the facts alleged therein by the Security Investigators are not of their own personal knowledge. They simply referred to the facts allegedly relayed to them by Chambers, Damoslog, Daguio, and Madao. Thus, there is a need to individually scrutinize the statements and testimonies of the four sources of the Joint Affidavit in order to determine the latter's probative weight.

The Joint Affidavit states that, "Mr. Dwayne Chambers saw and surprised several **unidentified miners** x x x."[30] Chambers simply narrated to the Security Investigators what he saw but did not indicate herein respondents.

Also stated in the Joint Affidavit is the alleged confession of Damoslog wherein he named respondents Tundagui and Dumapis as his companions in the act of highgrading.[31]

Records show that Damoslog submitted two sworn statements. In his first statement,[32] Damoslog claimed that he was unaware of the act of highgrading, and denied any involvement therein. However, in his second statement,[33] Damoslog claimed to have personally witnessed the act of highgrading and named the miners involved to wit:

07. Ques - Could you narrate briefly how it transpired then?

Ans - On the first hour of this specific dated and shift at about 0800hrs, while we were at the 8K stope, 850 level, **Mr. Joel Gumatin** approached me that he could not procure some needed amount of money and if possible we will commit highgrading for that effect to settle his problem. That because I pity him, I just answered that if they could manage to do it then they could do it.

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[30] *Rollo,* p. 177 (emphasis supplied).

[31] *Id.*

[32] *Id.* at 142-143.

[33] *Rollo,* pp. 144-147.

08. Ques - Who was the companion of Mr. Gumatin when he approached you?

Ans - He was alone.

09. Ques - Did Gumatin specifically informed [sic] you his problem?

Ans - I did not asked him honestly but he only insisted that he needed an amount of money badly as I earlier said.

10. Ques - So just after telling his purpose did he started [sic] the highgrading activity?

Ans - No, the highgrading scheme started at past 1300 Hrs.

11. Ques - How did it started [sic]?

Ans - They started after they all finished their respective drilling assignment. That while I was near the panel 2-West located at the inner portion of 8K Stope, I observed the LHD unit coming from the roadway near the 8K Eating station which was previously parked thereat proceeded to the roadway of panel 1-West then started cleaning and scraping said roadway. That after cleaning he parked it at the inner portion of the roadway. Then afterwhich one among the miner who was not assigned therein and I failed to identify his name shove two shovels on the roadway recently cleaned by the LHD then handed it to us with another man whom I don't know his name but could recognize and identify him if I will meet him again then we washed the same in the inner area of panel 2-West which is adjacent. That after washing and sorting the same, we placed it atop of an spread cartoon [sic] sheet. That while we were busy washing and sorting, Mr. Gumatin also was fixing and spreading the airhose for rockdrilling machine. That few moments thereafter, I heard the running engine of the drilling machine but I can not identify the operator as my line of view was obstructed by the curbed angle of the panel where we are washing the ores. That afterwhich I heard somebody that they are now going to blast the drilled

> holes but we remained in our place continuing washing the stones. That after the blast **Mr. Garcia** and one other companion whom I failed to identify due to foggy condition caused by the explosive blasting then handed us the additional newly unearth ores for washing. That while were still busy washing, Gumatin approached us then told us that he will collect what was already washed and sorted and start to process the same. That Gumatin took the items then started to pound the ores atop of an LHD unit parked near the entrance of panel 2-East which was not used during the shift. That after that, I stood up then subsequently proceeded to panel 2-West then observed messrs. **Maximo Madao, Benedict Arocod, Brent Suyam, Daniel Fegsar, Thomas Garcia, Mariolito Cativo, John Kitoyna and Samson Damian** who acted as the look out at the junction of 240 E, XCS and 8K Stope. The enumerated miners except Damian were in squatting position in scattered adjacent places busy sorting ores. Moments later Shift boss **Dionisio Bandoc** arrived then went to the place of Gumatin then told us that he will get a portion of the already proceeded ores for the operator to handcarry so that he will not need to come to 8K Stope, 850 level then after taking some of the loot he proceeded out simultaneously uttering that he will check the look out at the outer area of the mainline posted away from the 7K Stope.[34] (Emphasis supplied)

Evidently, Damoslog does not name respondents Dumapis and Tundagui as among the miners involved in the act of highgrading; neither does he mention respondent Liagao.

The Joint Affidavit also states that Daguio positively confirmed the act of highgrading. However, in his sworn statement,[35] Daguio claims that he did not recognize nor did he identify any of the miners, to wit:

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[34] *Rollo*, pp. 144-145.

[35] *Id.* at 140-141.

11. Ques - In your own honest observation, what could be the estimate [sic] number of this group of miners doing highgrading activities?

Ans - I don't know but obviously they were several as manifested by their number of cap lamplights. I also speculated that some of them were hidden at the curved inner access of the roadway enroute to the inner area.

12. Ques - Did you recognize nor [sic] **identify any of them?**

Ans - Honestly, no.[36] (Emphasis supplied)

Lastly, the Joint Affidavit also points to the confession of Madao wherein he particularly named respondent Liagao as one of the miners involved int he act of highgrading.

Madao submitted two sworn statements. In his first sworn statement[37] dated September 16, 2000, Madao claimed his innocence. He did not incriminate any of the respondents. However, in his second sworn statement[38] dated September 20, 2000, Madao claimed to have knowledge of the act of highgrading and specifically named respondent Liagao as one of the miners involved, to wit:

09. Ques - Do I understand that Mr. Suyam has companions and had drilled first the flooring of that roadway before blasting it?

Ans - Yes, that is true I saw Suyam and Gumatin transferred [sic] their assigned drilling machine at the said roadway and drilled the area with the company of Garcia, Kitoyan, Arocod, Damian, Fegsar and **Liagao**.[39] (Emphasis supplied)

Nonetheless, the second sworn statement of Madao is not sufficient to find Liagao guilty of highgrading. In a Joint Affidavit[40] which he executed with respondent Tundagui, Madao made the following declarations:

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[36] *Id.* at 141.

[37] *Rollo*, pp. 132-133.

[38] *Id.* at 134.

[39] *Id.*

[40] *Id.* at 136-138.

When I, MAXIMO MADAO reported for work on September 16, 2000, I am being required to appear at the security investigation office. After quitting time I went to the security office and was surprised to learn that my name is among those listed persons who were seen by Mr. Chambers committing acts of highgrading on September 15, 2000. However, when I quit work on September 20, 2000 I was again called through telephone to appear at the security office. Investigator Felimon Ringor told me that I will give another statement and convinced to tell me all the names of the persons assigned thereat with the promise that I will report for work. With my limited education having not finished grade 1, **I was made to give my statement on questions and answers which are self-incriminating and knowingly mentioned names of persons who are innocent.** Worst, when I got my copy and the contents were fully explained to me by our legal counsel I was surprised that it was duly notarized when in fact and in truth after I gave my statement I did not appear before Atty. Nina Fe Lazaga-Raffols for swearing. With this circumstances, **I hereby RETRACT my statement dated September 20, 2000 for being self incriminatory unassisted by my counsel** or union representative and hereby ADAPTS [sic] and RETAINS my sworn statement dated September 16, 2000.[41] (Emphasis supplied)

In labor cases, in which technical rules of procedure are not to be strictly applied if the result would be detrimental to the workingman, an affidavit of desistance gains added importance in the absence of any evidence on record explicitly showing that the dismissed employee committed the act which caused the dismissal.[42] Accordingly, the Court cannot turn a blind eye and disregard Madao's recantation, as it serves to cast doubt as to the guilt of respondent Liagao.

Based on the foregoing, the Court is convinced that the Joint Affidavit, being sourced from Chambers, Damoslog, Daguio and Madao, has no probative value to support evidence to warrant the dismissal of the respondents. Chambers and Daguio did not identify the miners involved in the act of highgrading. In addition, Damoslog's first and second sworn statements did

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[41] *Id.* at 137.

[42] *Oania v. National Labor Relations Commission*, G.R. Nos. 97162-64, June 1, 1995, 244 SCRA 668.

not implicate respondents, and Madao recanted his statement implicating respondent Liagao. As earlier discussed, the sworn statements and joint affidavits of the sources do not corroborate but actually cast doubt as to the veracity of the statements in the Joint Affidavit.

The second ground is not plausible.

While the Court agrees that the job of the respondents, as miners, although generally described as menial, is nevertheless of such nature as to require a substantial amount of trust and confidence on the part of petitioner,[43] the rule that proof beyond reasonable doubt is not required to terminate an employee on the charge of loss of confidence, and that it is sufficient that there be some basis for such loss of confidence, is not absolute.[44]

The right of an employer to dismiss an employee on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause.[45] In order that loss of trust and confidence may be considered as a valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work.[46]

In the present case, the Court reiterates that the evidence is **not substantial** to hold respondents guilty of highgrading so as to warrant the dismissal of respondents.

Moreover, it is a well-settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the

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[43] *Mina v. National Labor Relations Commission,* 316 Phil. 286 (1995).

[44] *Labor v. National Labor Relations Commission, supra* note 27, at 199.

[45] *Supra* note 27, *id.*

[46] See *Pilipinas Bank v. National Labor Relations Commission*, G.R. No. 101372, November 13, 1992, 215 SCRA 750; *China City Restaurant Corp. v. National Labor Relations Commission*, G.R. No. 97196, January 22, 1993, 217 SCRA 443; *Marcelo v. National Labor Relations Commission,* 310 Phil. 891 (1995).

latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail themselves of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[47]

Lastly, respondents' prayer in their Comment[48] and Memorandum,[49] that the CA Decision be modified by ordering their reinstatement to their former positions without loss of seniority rights and with payment of full backwages from their alleged dismissal up to date of reinstatement, deserves scant consideration. Respondents are estopped from claiming their right to reinstatement. Records show that respondents along with their co-accused, filed an appeal with the CA docketed as CA-G.R. SP No. 75457 questioning the decision of the NLRC. The said appeal was denied by the CA. The case was then elevated to this Court through a petition for review, entitled *Thomas Garcia v. Court of Appeals*, docketed as G.R. No. 162554. However, the same was denied with finality for having been filed out of time.[50] In effect, it serves to estop the respondents from praying for their reinstatement in the present case. Under the doctrine of conclusiveness of judgment, which is also known as "reclusion 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.[51] Applied to the present case, the "former suit" refers to CA-G.R. SP No. 75457 wherein the CA ordered separation pay instead of reinstatement and G.R. No. 162554 wherein this Court denied the petition for review filed by respondents

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[47] *Nicario v. National Labor Relations Commission,* 356 Phil. 936 (1998).

[48] *Rollo*, p. 291.

[49] *Id.* at 391.

[50] *Rollo*, pp. 309-340, 341-342, 343, 344-345, 346-347.

[51] *Tan v. Court of Appeals*, 415 Phil. 675, 681 (2001).

together with other dismissed workers. The "future case" is the present case in which the petitioner is Lepanto Consolidated Mining Company assailing the validity of the CA Decision declaring the dismissal of respondents to be illegal. Reinstatement was not an issue raised by herein petitioner. Respondents cannot now be allowed to raise the same in the petition filed by petitioner, for that would circumvent the finality of judgment as to separation pay insofar as respondents are concerned.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated November 7, 2003 and its Resolution dated April 15, 2004 in CA-G.R. SP No. 75860 are *AFFIRMED*.

Double costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167982. August 13, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MERCEDITAS DE SAHAGUN, MANUELA T. WAQUIZ and RAIDIS J. BASSIG,** *respondents.*[*]

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSES DO NOT PRESCRIBE; RATIONALE.— Well-

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

entrenched is the rule that administrative offenses do not prescribe. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.

2. ID.; STATUTES; INTERPRETATION; THE USE OF THE WORD "MAY" IS CONSTRUED TO BE PERMISSIVE AND OPERATING TO CONFER DISCRETION; JUSTIFIED.— In *Melchor v. Gironella*, the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the *Ombudsman* on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. In *Filipino v. Macabuhay*, the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner: Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of. Petitioner's argument is without merit. The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, **it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.** The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

3. ID.; OFFICE OF THE OMBUDSMAN; TO CONDUCT AN INVESTIGATION OF THE COMPLAINT EVEN IF FILED AFTER ONE YEAR FROM THE OCCURRENCE OF THE ACT OR OMISSION COMPLAINED OF IS DISCRETIONARY UPON THE OMBUDSMAN; BASIS.— As the Court recently held in *Office of the Ombudsman v. Court of Appeals,* Section 20 of R.A. No. 6770 has been clarified by Administrative Order No. 17, which amended Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the *Ombudsman*. Section 4, Rule III of the amended Rules of Procedure of the Office of the *Ombudsman* reads: Section 4. *Evaluation*. - Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be: a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;** b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules; c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings; d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. It is, therefore, discretionary upon the *Ombudsman* whether or not to conduct an investigation of a complaint even if it was filed after one year from the occurrence of the act or omission complained of.

4. ID.; ID.; THE OMBUDSMAN HAS THE POWER TO DIRECTLY IMPOSE THE PENALTY OF REMOVAL, SUSPENSION, DEMOTION, FINE, CENSURE, OR PROSECUTION OF A PUBLIC OFFICER OF EMPLOYEE; SUSTAINED.— In *Ledesma v. Court of Appeals*, the Court has ruled that the statement in *Tapiador* that made reference to the power of the *Ombudsman* to impose an administrative penalty was merely an *obiter dictum* and could not be cited as a doctrinal declaration of this Court, thus: x x x [A] cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the

administrative case. **The statement that made reference to the power of the Ombudsman is, at best, merely an obiter dictum** and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, **it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.** In *Estarija v. Ranada,* the Court reiterated its pronouncements in *Ledesma* and categorically stated: x x x [T]he Constitution does not restrict the powers of the Ombudsman in Section 13, Article XI of the 1987 Constitution, but allows the Legislature to enact a law that would spell out the powers of the Ombudsman. Through the enactment of Rep. Act No. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress, and the Judiciary. To conclude, we hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound. **The powers of the Ombudsman are not merely recommendatory.** His office was given teeth to render this constitutional body not merely functional but also effective. **Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official** other than a member of Congress and the Judiciary. The power of the *Ombudsman* to directly impose administrative sanctions has been repeatedly reiterated in the subsequent cases of *Barillo v. Gervasio, Office of the Ombudsman v. Madriaga, Office of the Ombudsman v. Court of Appeals, Balbastro v. Junio, Commission on Audit, Regional Office No. 13, Butuan City v. Hinampas, Office of the Ombudsman v. Santiago, Office of the Ombudsman v. Lisondra,* and most recently in *Deputy Ombudsman for the Visayas v. Abugan* and continues to be the controlling doctrine. In fine, it is already well-settled that the *Ombudsman's* power as regards the administrative penalty to be imposed on an erring public officer or employee is not merely recommendatory. The *Ombudsman* has the power to directly impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, other than a member of Congress and the Judiciary, found to be at fault, within the exercise of its administrative disciplinary authority as provided in the Constitution, R.A. No. 6770, as well as jurisprudence. This power gives the said constitutional office teeth to render it not merely functional, but also effective.

APPEARANCES OF COUNSEL

Office of Legal Affairs (Ombudsman) for petitioner.
David Tamayo & Cui-David Law Offices for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated April 28, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78008 which set aside the Orders dated March 10, 2003 and June 24, 2003 of the petitioner Office of the *Ombudsman* in OMB-ADM-0-00-0721.

The material antecedents are as follows:

On November 13, 1992, respondent Raidis J. Bassig, Chief of the Research and Publications Division of the Intramuros Administration, submitted a Memorandum to then Intramuros Administrator Edda V. Henson (Henson) recommending that Brand Asia, Ltd. be commissioned to produce a video documentary for a television program, as well implement a media plan and marketing support services for Intramuros.

On November 17, 1992, the Bids and Awards Committee (BAC) of the Intramuros Administration, composed of respondent Merceditas de Sahagun, as Chairman, with respondent Manuela T. Waquiz and Dominador C. Ferrer, Jr. (Ferrer), as members, submitted a recommendation to Henson for the approval of the award of said contract to Brand Asia, Ltd. On the same day, Henson approved the recommendation and issued a Notice of Award to Brand Asia, Ltd.

On November 23, 1992, a contract of service to produce a video documentary on Intramuros for TV program airing was

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[1] Penned by Presiding Justice Romeo A. Brawner (now deceased) and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza, CA *rollo*, p. 124.

executed between Henson and Brand Asia, Ltd. On December 1, 1992, a Notice to Proceed was issued to Brand Asia, Ltd.

On June 2, 1993, the BAC, with Augusto P. Rustia (Rustia) as additional member, recommended to Henson the approval of the award of contract for print collaterals to Brand Asia, Ltd. On the same day, Henson approved the recommendation and issued a Notice of Award/Notice to Proceed to Brand Asia, Ltd.

On June 22, 1993, a contract of services to produce print collaterals was entered between Henson and Brand Asia, Ltd.

On March 7, 1995, an anonymous complaint was filed with the Presidential Commission Against Graft and Corruption (PGAC) against Henson in relation to the contracts entered into with Brand Asia, Ltd.

On November 30, 1995, Henson was dismissed from the service by the Office of the President upon recommendation of the PGAC which found that the contracts were entered into without the required public bidding and in violation of Section 3 (a) and (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act.

On August 8, 1996, an anonymous complaint was filed with the *Ombudsman* against the BAC in relation to the latter's participation in the contracts with Brand Asia, Ltd. for which Henson was dismissed from service.

On September 5, 2000, Fact-Finding Intelligence Bureau (FFIB) filed criminal and administrative charges against respondents, along with Ferrer and Rustia, for violation of Section 3 (a) and (c) of R.A. No. 3019 in relation to Section 1 of Executive Order No. 302 and grave misconduct, conduct grossly prejudicial to the best interest of the service and gross violation of Rules and Regulations pursuant to the Administrative Code of 1987, docketed as OMB-0-00-1411 and OMB-ADM-0-00-0721, respectively.[2] OMB-0-00-1411 was dismissed on February 27, 2002 for lack of probable cause.[3]

[2] *Rollo*, p. 133.

[3] CA *rollo*, p. 46.

In his proposed Decision[4] dated June 19, 2002, Graft Investigation Officer II Joselito P. Fangon recommended the dismissal of OMB-ADM-0-00-0721.

However, then *Ombudsman* Simeon V. Marcelo disapproved the recommendation. In an Order[5] dated March 10, 2003, he held that there was substantial evidence to hold respondents administratively liable since the contracts awarded to Brand Asia, Ltd. failed to go through the required procedure for public bidding under Executive Order No. 301 dated July 26, 1987. Respondents and Ferrer were found guilty of grave misconduct and dismissed from service. Rustia was found guilty of simple misconduct and suspended for six months without pay.

On March 17, 2003, respondents, along with Rustia, filed a Motion for Reconsideration.[6]

On June 24, 2003, *Ombudsman* Marcelo issued an Order[7] partially granting the motion for reconsideration. Respondents and Ferrer were found guilty of the lesser offense of simple misconduct and suspended for six months without pay. Rustia's suspension was reduced to three months.

Dissatisfied, respondents filed a Petition for Review[8] with the CA assailing the Orders dated March 10, 2003 and June 24, 2003 of the *Ombudsman*.

On April 28, 2005, the CA rendered a Decision[9] setting aside the Orders dated March 10, 2003 and June 24, 2003 of the *Ombudsman*. The CA held that respondents may no longer be prosecuted since the complaint was filed more than seven years after the imputed acts were committed which was beyond the one year period provided for by Section 20 (5) of Republic Act

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[4] *Id.* at 24.

[5] *Id.* at 17.

[6] *Rollo*, p. 141.

[7] CA *rollo*, p. 21.

[8] *Id.* at 2.

[9] *Supra* note 1.

(R.A.) No. 6770, otherwise known as "The Ombudsman Act of 1989"; and that the nature of the function of the *Ombudsman* was purely recommendatory and it did not have the power to penalize erring government officials and employees. The CA relied on the following statement made by the Court in *Tapiador v. Office of the Ombudsman*,[10] to wit:

> x x x Besides, assuming *arguendo*, that petitioner [Tapiador] was administratively liable, **the Ombudsman has no authority to directly dismiss the petitioner from the government service**, more particularly from his position in the BID. Under Section 13, subparagraph 3, of Article XI of the 1987 Constitution, **the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned**.[11] (Emphasis supplied)

Hence, the present petition raising the following issues (1) whether Section 20 (5) of R.A. No. 6770 prohibits administrative investigations in cases filed more than one year after commission, and (2) whether the *Ombudsman* only has recommendatory, not punitive, powers against erring government officials and employees.

The Court rules in favor of the petitioner.

The issues in the present case are settled by precedents.

On the first issue, well-entrenched is the rule that administrative offenses do not prescribe.[12] Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.[13]

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[10] 429 Phil. 47 (2002).

[11] *Tapiador v. Office of the Ombudsman, supra* note 10, at 58.

[12] *Concerned Taxpayer v. Doblada, Jr.,* A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218; *Melchor v. Gironella,* G.R. No. 151138, February 16, 2005, 451 SCRA 476; *Heck v. Judge Santos*, 467 Phil. 798, 824 (2004); *Floria v. Sunga,* 420 Phil. 637, 648-649 (2001).

[13] *Melchor v. Gironella, supra* note 12 at 481; *Remolona v. Civil Service Commission,* 414 Phil. 590, 601 (2001).

Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:

> SEC. 20. *Exceptions.* – The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
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> x x x x x x x x x
>
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In *Melchor v. Gironella*,[14] the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the *Ombudsman* on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion.[15] Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.[16]

In *Filipino v. Macabuhay*,[17] the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

> Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.

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[14] *Supra* note 12.

[15] *Id.* at 481; *Jaramilla v. Comelec*, 460 Phil. 507, 514 (2003).

[16] *Melchor v. Gironella, supra* note 12, at 481; *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910, 918 (2000).

[17] G.R. No. 158960, November 24, 2006, 508 SCRA 50.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, **it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription**.[18] (Emphasis supplied)

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

As the Court recently held in *Office of the Ombudsman v. Court of Appeals*,[19] Section 20 of R.A. No. 6770 has been clarified by Administrative Order No. 17,[20] which amended Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the *Ombudsman*. Section 4, Rule III[21] of the amended Rules of Procedure of the Office of the *Ombudsman* reads:

Section 4. *Evaluation*. - Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be**:

a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;

b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;

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[18] *Id.* at 57-58.

[19] G.R. No. 159395, May 7, 2008.

[20] Entitled "Amendment of Rule III, Administrative Order No. 07," signed by Ombudsman Simeon V. Marcelo on September 15, 2003.

[21] Procedure in Administrative Cases.

c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings;

d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or

e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis supplied)

It is, therefore, discretionary upon the *Ombudsman* whether or not to conduct an investigation of a complaint even if it was filed after one year from the occurrence of the act or omission complained of.

Thus, while the complaint herein was filed only on September 5, 2000, or more than seven years after the commission of the acts imputed against respondents in November 1992 and June 1993, it was within the authority of the *Ombudsman* to conduct the investigation of the subject complaint.

On the second issue, the authority of the Ombudsman to determine the administrative liability of a public official or employee, and to direct and compel the head of the office or agency concerned to implement the penalty imposed is likewise settled.

In *Ledesma v. Court of Appeals*,[22] the Court has ruled that the statement in *Tapiador* that made reference to the power of the *Ombudsman* to impose an administrative penalty was merely an *obiter dictum* and could not be cited as a doctrinal declaration of this Court, thus:

x x x [A] cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. **The statement that made reference to the power of the Ombudsman is, at best, merely an *obiter dictum*** and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as

[22] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

what precisely is before us in this case. Hence, **it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination**.[23] (Emphasis supplied)

In *Estarija v. Ranada*,[24] the Court reiterated its pronouncements in *Ledesma* and categorically stated:

x x x [T]he Constitution does not restrict the powers of the Ombudsman in Section 13, Article XI of the 1987 Constitution, but allows the Legislature to enact a law that would spell out the powers of the Ombudsman. Through the enactment of Rep. Act No. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress, and the Judiciary. To conclude, we hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound. **The powers of the Ombudsman are not merely recommendatory**. His office was given teeth to render this constitutional body not merely functional but also effective. **Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official** other than a member of Congress and the Judiciary.[25] (Emphasis supplied)

The power of the *Ombudsman* to directly impose administrative sanctions has been repeatedly reiterated in the subsequent cases of *Barillo v. Gervasio*,[26] *Office of the Ombudsman v. Madriaga*,[27] *Office of the Ombudsman v. Court of Appeals*,[28] *Balbastro v. Junio*,[29] *Commission on Audit, Regional Office No. 13, Butuan City v. Hinampas*,[30] *Office of the Ombudsman*

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[23] *Id.* at 448-449.

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

[25] *Id.* at 673-674.

[26] G.R. No. 155088, August 31, 2006, 500 SCRA 561.

[27] G.R. No. 164316, September 27, 2006, 503 SCRA 631.

[28] G.R. No. 168079, July 17, 2007, 527 SCRA 798.

[29] G.R. No. 154678, July 17, 2007, 527 SCRA 680.

[30] G.R. No. 158672, August 7, 2007, 529 SCRA 245.

v. Santiago,[31] *Office of the Ombudsman v. Lisondra,*[32] and most recently in *Deputy Ombudsman for the Visayas v. Abugan*[33] and continues to be the controlling doctrine.

In fine, it is already well-settled that the *Ombudsman's* power as regards the administrative penalty to be imposed on an erring public officer or employee is not merely recommendatory. The *Ombudsman* has the power to directly impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, other than a member of Congress and the Judiciary, found to be at fault, within the exercise of its administrative disciplinary authority as provided in the Constitution, R.A. No. 6770, as well as jurisprudence. This power gives the said constitutional office teeth to render it not merely functional, but also effective.[34]

Thus, the CA committed a reversible error in holding that the case had already prescribed and that the *Ombudsman* does not have the power to penalize erring government officials and employees.

WHEREFORE, the petition is *GRANTED*. The Decision dated April 28, 2005 of the Court of Appeals in CA-G.R. SP No. 78008 is *REVERSED* and *SET ASIDE*. The Order dated June 24, 2003 of the Office of the Ombudsman is *REINSTATED*.

SO ORDERED.

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

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[31] G.R. No. 161098, September 13, 2007, 533 SCRA 305.

[32] G.R. No. 174045, March 7, 2008.

[33] G.R. No. 168892, March 24, 2008.

[34] *Office of the Ombudsman v. Lisondra, supra* note 32, at 18.

EN BANC

[G.R. No. 169815. August 13, 2008]

BUREAU OF FISHERIES AND AQUATIC RESOURCES (BFAR) EMPLOYEES UNION, REGIONAL OFFICE NO. VII, CEBU CITY, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; SOCIAL JUSTICE PROVISIONS OF THE CONSTITUTION, NOT SELF-EXECUTING PRINCIPLES READY FOR ENFORCEMENT THROUGH COURTS.— Time and again, we have ruled that the social justice provisions of the Constitution are not self-executing principles ready for enforcement through the courts. They are merely statements of principles and policies. To give them effect, legislative enactment is required. As we held in ***Kilosbayan, Incorporated v. Morato,*** the principles and state policies enumerated in Article II and some sections of Article XII are "not self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6758 (THE SALARY STANDARDIZATION LAW); ALL KINDS OF ALLOWANCES ARE INTEGRATED IN THE STANDARDIZED SALARY RATES; EXCEPTIONS.— [R.A. No. 6758 or the Salary Standardization Law] was passed to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them. x x x Under Sec. 12, x x x all kinds of allowances are integrated in the standardized salary rates. The exceptions are: 1. representation and transportation allowance (RATA); 2. clothing and laundry allowance; 3. subsistence allowance of marine officers and crew on board government vessels; 4. subsistence allowance of hospital personnel; 5. hazard pay; 6. allowances of foreign

service personnel stationed abroad; and 7. such other additional compensation not otherwise specified herein as may be determined by the DBM. x x x The Court has had the occasion to interpret Sec. 12 of R.A. No. 6758. In ***National Tobacco Administration v. Commission on Audit,*** we held that under the first sentence of Section 12, the benefits excluded from the standardized salary rates are the "allowances" or those which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. These are the RATA, clothing and laundry allowance, subsistence allowance of marine officers and crew on board government vessels and hospital personnel, hazard pay, and others, as enumerated in the first sentence of Section 12. We further ruled that the phrase "and such other additional compensation not otherwise specified herein as may be determined by the DBM" is a catch-all proviso for benefits in the nature of allowances similar to those enumerated. In ***Philippine Ports Authority v. Commission on Audit,*** we explained that if these allowances were consolidated with the standardized salary rates, then government officials or employees would be compelled to spend their personal funds in attending to their duties.

3. ID.; ID.; ID.; ALLOWANCES/ADDITIONAL COMPENSATION OF GOVERNMENT OFFICIALS AND EMPLOYEES WHICH SHALL BE DEEMED INTEGRATED INTO THE BASIC SALARY, ENUMERATED.— [The] National Compensation Circular No. 59 dated September 30, 1989, issued by the DBM provides the "List of Allowances/Additional Compensation of Government Officials and Employees which shall be Deemed Integrated into the Basic Salary." The list enumerates the following allowances/additional compensation which shall be incorporated in the basic salary, hence, may no longer be granted to government employees: 1. Cost of Living Allowance (COLA); 2. Inflation connected allowance; 3. Living Allowance; 4. Emergency Allowance; 5. Additional Compensation of Public Health Nurses assigned to public health nursing; 6. Additional Compensation of Rural Health Physicians; 7. Additional Compensation of Nurses in Malacañang Clinic; 8. Nurses Allowance in the Air Transportation Office; 9. Assignment Allowance of School Superintendents; 10. Post allowance of Postal Service Office employees;11. Honoraria/allowances which

> are regularly given except the following: a. those for teaching overload; b. in lieu of overtime pay; c. for employees on detail with task forces/special projects; d. researchers, experts and specialists who are acknowledged authorities in their field of specialization; e. lecturers and resource persons; f. Municipal Treasurers deputized by the Bureau of Internal Revenue to collect and remit internal revenue collections; and g. Executive positions in State Universities and Colleges filled by designation from among their faculty members. 12. Subsistence Allowance of employees except those authorized under E.O. [Executive Order] No. 346 and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; 13. Laundry Allowance of employees except those hospital/sanitaria personnel who attend directly to patients and who by the nature of their duties are required to wear uniforms, prison guards and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; and 14. Incentive allowance/ fee/pay except those authorized under the General Appropriations Act and Section 33 of P.D. No. 807. x x x Under National Compensation Circular No. 59, exceptions to the incentive allowance/fee/pay category are those authorized under the General Appropriations Act (GAA) and Section 33 of Presidential Decree (P.D.) No. 807. Sec. 15(d) of the GAA for Fiscal Year 1999 or R.A. No. 8745 clearly prohibits the payment of honoraria, allowances or other forms of compensation to any government official or employee, except those specifically authorized by law.

APPEARANCES OF COUNSEL

Navarro & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PUNO, *C.J.*:

On appeal are the Decision[1] dated April 8, 2005 of respondent Commission on Audit (COA) in LAO-N-2005-119 upholding

[1] *Rollo*, pp. 37-39.

the disallowance by the COA Legal and Adjudication Office (COA-LAO), Regional Office No. VII, Cebu City of the ₱10,000.00 Food Basket Allowance granted by BFAR to each of its employees in 1999, and COA Resolution[2] dated August 5, 2005, denying petitioner's motion for reconsideration of said Decision.

First, the facts:

On October 18, 1999, petitioner Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City issued Resolution No. 01, series of 1999 requesting the BFAR Central Office for a Food Basket Allowance. It justified its request on the high cost of living, *i.e.*, "the increase in prices of petroleum products which catapulted the cost of food commodities, has greatly affected the economic conditions and living standard of the government employees of BFAR Region VII and could hardly sustain its need to cope up with the four (4) basic needs, *i.e.*, food, shelter, clothing and education."[3] It also relied on the Employees Suggestions and Incentive Awards System (ESIAS), pursuant to Book V of Executive Order No. 292, or the Administrative Code of 1987, and approved by the Civil Service Commission on December 3, 1996. The ESIAS "includes the granting of incentives that will help employees overcome present economic difficulties, boost their morale, and further commitment and dedication to public service."[4] Regional Director Corazon M. Corrales of BFAR Region VII indorsed the Resolution, and Malcolm I. Sarmiento, Jr., Director of BFAR recommended its approval. Honorable Cesar M. Drilon, Jr., Undersecretary for Fisheries and Livestock of the Department of Agriculture, approved the request for Authority to Grant a Gift Check or the Food Basket Allowance at the rate of ₱10,000.00 each to the 130 employees of BFAR Region VII, or in the total amount

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

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

[4] *Id.*

of ₱1,322,682.00.[5] On the strength of the approval, Regional Director Corrales released the allowance to the BFAR employees.

On post audit, the Commission on Audit – Legal and Adjudication Office (COA-LAO) Regional Office No. VII, Cebu City disallowed the grant of Food Basket Allowance under Notice of Disallowance No. 2003-022-101 (1999) dated September 19, 2003. It ruled that the allowance had no legal basis and that it violated: a) Sec. 15(d) of the General Appropriations Act of 1999, prohibiting the payment of honoraria, allowances, or other forms of compensation to any government official or employee, except those specifically authorized by law; b) par. 4.5 of Budget Circular No. 16 dated November 28, 1998, prohibiting the grant of food, rice, gift checks, or any other form of incentives/allowances, except those authorized via Administrative Order by the Office of the President; and c) Sec. 12 of Republic Act (R.A.) No. 6758, or the Salary Standardization Law of 1989, which includes all allowances in the standardized salary rates, subject to certain exceptions.

On February 26, 2004, BFAR Regional Office No. VII, through Regional Director Corrales, moved for reconsideration and prayed for the lifting of the disallowance. It argued that the grant of Food Basket Allowance would enhance the welfare and productivity of the employees. Further, it contended that the approval by the Honorable Drilon, Undersecretary for Fisheries and Livestock, of the said benefit was the law itself which vested the specific authority for its release. The Commission on Audit – Legal and Adjudication Office (COA-LAO) Regional Office No. VII, Cebu City denied the motion.

Petitioner appealed to the Commission on Audit – Legal and Adjudication Office (COA-LAO) National, Quezon City. The appeal was denied in a Decision dated April 8, 2005. Petitioner's motion for reconsideration was likewise denied in a Resolution dated August 5, 2005.

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[5] *Rollo*, p. 28.

Hence, this appeal.

Petitioner cites the following grounds for its appeal:

1. The disallowance in question is unconstitutional as it contravenes the fundamental principle of the State enshrined under Sections 9 and 10, Article II of the 1987 Constitution, which provide as follows:

   SEC. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

   SEC. 10. The State shall promote social justice in all phases of national development.[6]

2. The Undersecretary for Fisheries and Livestock is an extension of the Secretary of Agriculture who is an alter-ego of the President. His approval was tantamount to the authority from the Office of the President, as contemplated in DBM Budget Circular No. 16, dated November 28, 1998.[7]

3. The grant of the Food Basket Allowance is in conformity with Sec. 12 of the Salary Standardization Law.[8]

We deny the petition.

First, we rule on the issue of constitutionality. Petitioner invokes the provisions of the 1987 Constitution on social justice to warrant the grant of the Food Basket Allowance. Time and again, we have ruled that the social justice provisions of the Constitution are not self-executing principles ready for enforcement through the courts. They are merely statements of principles and policies. To give them effect, legislative enactment is required. As we held in ***Kilosbayan, Incorporated v. Morato***,[9] the principles

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

[7] *Rollo*, p. 20.

[8] *Id.*, pp. 20-21.

[9] G.R. No. 118910, July 17, 1995, 246 SCRA 540, 564.

and state policies enumerated in Article II and some sections of Article XII are "not self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."[10]

Second, petitioner contends that the approval of the Department of Agriculture (DA) Undersecretary for Fisheries and Livestock of the Food Basket Allowance is the law which authorizes its release. It is crystal clear that the DA Undersecretary has no authority to grant any allowance to the employees of BFAR. Section 4.5 of Budget Circular No. 16 dated November 28, 1998 states:

> All agencies are hereby prohibited from granting any food, rice, gift checks, or any other form of incentives/allowances **except those authorized via Administrative Order by the Office of the President**.

In the instant case, no Administrative Order has been issued by the Office of the President to exempt BFAR from the express prohibition against the grant of any food, rice, gift checks, or any other form of incentive/allowance to its employees.

Petitioner argues that the grant of the Food Basket Allowance does not violate Sec. 12 of R.A. No. 6758 or the Salary Standardization Law. This law was passed to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them.[11] Sec. 12 of the law provides:

> Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein

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[10] Cited in *Tañada v. Angara*, 338 Phil. 546 (1997).

[11] *Ambros v. COA*, G.R. No. 159700, June 30, 2005, 462 SCRA 572, 597.

as may be determined by the DBM [Department of Budget and Management], shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Under Sec. 12, as quoted, all kinds of allowances are integrated in the standardized salary rates. The exceptions are:

1. representation and transportation allowance (RATA);
2. clothing and laundry allowance;
3. subsistence allowance of marine officers and crew on board government vessels;
4. subsistence allowance of hospital personnel;
5. hazard pay;
6. allowances of foreign service personnel stationed abroad; and
7. such other additional compensation not otherwise specified herein as may be determined by the DBM.

Petitioner contends that the Food Basket Allowance falls under the 7th category above, that of "other additional compensation not otherwise specified herein as may be determined by the DBM."

The Court has had the occasion to interpret Sec. 12 of R.A. No. 6758. In ***National Tobacco Administration v. Commission on Audit***,[12] we held that under the first sentence of Section 12, the benefits excluded from the standardized salary rates are the "allowances" or those which are usually granted to officials and employees of the government to defray or reimburse

[12] 370 Phil. 793 (1999).

the expenses incurred in the performance of their official functions. These are the RATA, clothing and laundry allowance, subsistence allowance of marine officers and crew on board government vessels and hospital personnel, hazard pay, and others, as enumerated in the first sentence of Section 12. We further ruled that the phrase "and such other additional compensation not otherwise specified herein as may be determined by the DBM" is a catch-all proviso for benefits in the nature of allowances similar to those enumerated. In ***Philippine Ports Authority v. Commission on Audit***,[13] we explained that if these allowances were consolidated with the standardized salary rates, then government officials or employees would be compelled to spend their personal funds in attending to their duties.

In the instant case, the Food Basket Allowance is definitely not in the nature of an allowance to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. It is a form of financial assistance to all officials and employees of BFAR. Petitioner itself stated that the Food Basket Allowance has the purpose of alleviating the economic condition of BFAR employees.

Next, petitioner relies on National Compensation Circular No. 59 dated September 30, 1989, issued by the DBM, which is the "List of Allowances/Additional Compensation of Government Officials and Employees which shall be Deemed Integrated into the Basic Salary." The list enumerates the following allowances/additional compensation which shall be incorporated in the basic salary, hence, may no longer be granted to government employees:

1. Cost of Living Allowance (COLA);
2. Inflation connected allowance;
3. Living Allowance;
4. Emergency Allowance;

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[13] G.R. No. 100773, October 16, 1992, 214 SCRA 653 (1992).

5. Additional Compensation of Public Health Nurses assigned to public health nursing;
6. Additional Compensation of Rural Health Physicians;
7. Additional Compensation of Nurses in Malacañang Clinic;
8. Nurses Allowance in the Air Transportation Office;
9. Assignment Allowance of School Superintendents;
10. Post allowance of Postal Service Office employees;
11. Honoraria/allowances which are regularly given except the following:
    a. those for teaching overload;
    b. in lieu of overtime pay;
    c. for employees on detail with task forces/special projects;
    d. researchers, experts and specialists who are acknowledged authorities in their field of specialization;
    e. lecturers and resource persons;
    f. Municipal Treasurers deputized by the Bureau of Internal Revenue to collect and remit internal revenue collections; and
    g. Executive positions in State Universities and Colleges filled by designation from among their faculty members.
12. Subsistence Allowance of employees except those authorized under EO [Executive Order] No. 346 and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police;
13. Laundry Allowance of employees except those hospital/ sanitaria personnel who attend directly to patients and who by the nature of their duties are required to wear uniforms, prison guards and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; and
14. Incentive allowance/fee/pay except those authorized under the General Appropriations Act and Section 33 of P.D. No. 807.

Petitioner invokes the rule of statutory construction that "what is not included is excluded." *Inclusio unius est exclusio alterius.* Petitioner claims that the Food Basket Allowance is distinct and separate from the specific allowances/additional compensation listed in the circular.

Again, we reject petitioner's contention. The Food Basket Allowance falls under the 14th category, that of incentive allowance/fee/pay. Petitioner itself justified the Food Basket Allowance as an incentive to the employees to encourage them to be more productive and efficient.[14] Under National Compensation Circular No. 59, exceptions to the incentive allowance/fee/pay category are those authorized under the General Appropriations Act (GAA) and Section 33 of Presidential Decree (P.D.) No. 807. Sec. 15(d) of the GAA for Fiscal Year 1999 or R.A. No. 8745 clearly prohibits the payment of honoraria, allowances or other forms of compensation to any government official or employee, except those specifically authorized by law. There is no law authorizing the grant of the subject Food Basket Allowance. Further, Sec. 33 of P.D. No. 807 or the Civil Service Decree of the Philippines does not exempt the Food Basket Allowance from the general rule. Sec. 33 states:

Section 33. *Employee Suggestions and Incentive Award System.* There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

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[14] *Rollo,* p. 21.

We are not convinced that the Food Basket Allowance falls under the incentive award system contemplated above. The decree speaks of suggestions, inventions, superior accomplishments, and other personal efforts contributed by an employee to the efficiency, economy, or other improvement of government operations, or other extraordinary acts or services performed by an employee in the public interest in connection with, or in relation to, his official employment. In the instant case, the Food Basket Allowance was granted to all BFAR employees, without distinction. It was not granted due to any extraordinary contribution or exceptional accomplishment by an employee. The Food Basket Allowance was primarily an economic monetary assistance to the employees.

Lastly, we note, as the Office of the Solicitor General, on behalf of respondent did, that petitioner failed to exhaust its administrative remedies. It stopped seeking remedies at the level of respondent's Legal and Adjudication Office. It failed to appeal the latter's adverse decision to the Commission on Audit proper. The consequence for failure to exhaust administrative remedies is clear: the disallowance, as ruled by the Commission on Audit – Legal and Adjudication Office Regional Office No. VII, Cebu City and upheld by the Commission on Audit – Legal and Adjudication Office National, Quezon City, became final and executory. Sections 48 and 51 of Presidential Decree No. 1445, or the Government Auditing Code of the Philippines provide:

> Section 48. Appeal from decision of auditors. – Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may, within six months from receipt of a copy of the decision, appeal in writing to the Commission.
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> Section 51. Finality of decisions of the Commission or any auditor. – A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

IN VIEW WHEREOF, the petition is *DENIED*. The Decision and Resolution of the Commission on Audit –

Legal and Adjudication Office dated April 8, 2005 and August 5, 2005, respectively, in LAO-N-2005-119, are *AFFIRMED.*

SO ORDERED.

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

Nachura, J., no part.

SECOND DIVISION

[G.R. No. 170452. August 13, 2008]

SALVADOR CHUA and VIOLETA CHUA, *petitioners, vs.* **RODRIGO TIMAN, MA. LYNN TIMAN and LYDIA TIMAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST RATES; STIPULATED INTEREST RATES OF 3% PER MONTH AND HIGHER ARE EXCESSIVE, INIQUITOUS, UNCONSCIONABLE AND EXHORBITANT.— The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum. We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the

ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN ISSUE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— The defense of *in pari delicto* was not raised in the RTC, hence, such an issue cannot be raised for the first time on appeal. Petitioners must have seasonably raised it in the proceedings before the lower court, because questions raised on appeal are confined only within the issues framed by the parties.

3. ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF CIVIL PROCEDURE; LIMITED TO REVIEW OF QUESTIONS OF LAW.— The defense of good faith must also fail because such an issue is a question of fact which may not be properly raised in a petition for review under Rule 45 of the Rules of Civil Procedure which allows only questions of law.

APPEARANCES OF COUNSEL

Jose S. Santos, Jr. for petitioner.
Salonga Hernandez & Mendoza for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review on certiorari assailing the Decision[1] and Resolution[2] dated March 9, 2005 and November 24, 2005, respectively, of the Court of Appeals in CA-G.R.

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[1] *Rollo*, pp. 28-34. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas concurring.

[2] *Id.* at 36-37.

CV No. 82865, which had affirmed the Decision[3] dated May 14, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 86, in Civil Case No. Q-00-41276. The Court of Appeals reduced the stipulated original interest rates of 7% and 5% per month to only 1% per month or 12% per annum and ordered petitioners to refund the excess interest payments by respondents.

The pertinent facts are as follows:

In February and March 1999, petitioners Salvador and Violeta Chua granted respondents Rodrigo, Ma. Lynn and Lydia Timan the following loans: a) ₱100,000; b) ₱200,000; c) ₱150,000; d) ₱107,000; e) ₱200,000; and f) ₱107,000. These loans were evidenced by promissory notes with interest of 7% per month, which was later reduced to 5% per month. Rodrigo and Ma. Lynn issued five (5) postdated checks to secure the loans, except for the ₱150,000 loan which was secured by a postdated check issued by Lydia.

Respondents paid the loans initially at 7% interest rate per month until September 1999 and then at 5% interest rate per month from October to December 1999. Sometime in March 2000, respondents offered to pay the principal amount of the loans through a Philippine National Bank manager's check worth ₱764,000, but petitioners refused to accept the same insisting that the principal amount of the loans totalled ₱864,000.

On May 3, 2000, respondents deposited ₱864,000 with the Clerk of Court of the RTC of Quezon City. Later, they filed a case for consignation and damages. Petitioners moved to dismiss the case, but the RTC denied the motion, as well as the subsequent motion for reconsideration.

By virtue of an order of Partial Judgment[4] dated October 16, 2002, the Clerk of Court of the RTC of Quezon City released the amount of ₱864,000 to petitioners.

Trial on the validity of the stipulated interests on the subject loans, as well as on the issue of damages, then proceeded.

[3] *Id.* at 111-115. Penned by Judge Teodoro A. Bay.

[4] *Id.* at 105-106.

On May 14, 2004, the RTC rendered a decision in favor of respondents. It ruled that the original stipulated interest rates of 7% and 5% per month were excessive. It further ordered petitioners to refund to respondents all interest payments in excess of the legal rate of 1% per month or 12% per annum. However, the RTC denied petitioners' claim for damages.

On appeal, the Court of Appeals affirmed the trial court's decision. The Court of Appeals declared illegal the stipulated interest rates of 7% and 5% per month for being excessive, iniquitous, unconscionable and exorbitant. Accordingly, the Court of Appeals reduced the stipulated interest rates of 7% and 5% per month (equivalent to 84% and 60% per annum, respectively) to a fair and reasonable rate of 1% per month or 12% per annum. The Court of Appeals also ordered petitioners to refund to respondents all interest payments in excess of 12% per annum. Petitioners sought reconsideration, but it was denied.

Hence, this petition raising the lone issue of:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR – OR ACTED NOT IN ACCORD WITH THE LAW AND JURISPRUDENCE – WHEN IT AFFIRMED THE JUDGMENT OF THE REGIONAL TRIAL COURT ORDERING THE RETURN OF THE EXCESS INTEREST TO RESPONDENTS.[5]

Essentially, the main issue is: (1) Did the Court of Appeals err in ruling that the original stipulated interest rates of 7% and 5%, equivalent to 84% and 60% per annum, are unconscionable, and in ordering petitioners to refund to respondents all payments of interest in excess of 12% per annum?

Petitioners aver that the stipulated interest of 5% monthly and higher cannot be considered unconscionable because these rates are not usurious by virtue of Central Bank (C.B.) Circular No. 905-82[6] which had expressly removed the interest ceilings

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[5] *Id.* at 212.

[6] SECTION 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money, goods or credits, regardless of maturity and whether secured or unsecured, that may

prescribed by the Usury Law. Petitioners add that respondents were *in pari delicto* since they agreed on the stipulated interest rates of 7% and 5% per month. They further aver they honestly believed that the interest rates they imposed on respondents' loans were not usurious.

Respondents, invoking *Medel v. Court of Appeals*,[7] counter that the stipulated interest rates of 7% and 5% per month are iniquitous, unconscionable and exorbitant, thus, they are entitled to the return of the excessive interest paid. They also contend that petitioners cannot raise the defense of *in pari delicto* for the first time on appeal. They further contend that the defense of good faith is a factual issue which cannot be raised by petitioners in a petition for review under Rule 45 of the Rules of Civil Procedure.

The petition is patently devoid of merit.

The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum.[8] We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3%[9] per month and higher[10] are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law.[11] While C.B. Circular No. 905-82, which took effect on January 1, 1983,

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be charged or collected by any person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended.

[7] G.R. No. 131622, November 27, 1998, 299 SCRA 481.

[8] *Ruiz v. Court of Appeals*, G.R. No. 146942, April 22, 2003, 401 SCRA 410, 421.

[9] *Id.*

[10] *Solangon v. Salazar*, G.R. No. 125944, June 29, 2001, 360 SCRA 379, 384-385; *Imperial v. Jaucian*, G.R. No. 149004, April 14, 2004, 427 SCRA 517, 525-526; *Cuaton v. Salud*, G.R. No. 158382, January 27, 2004, 421 SCRA 278, 282.

[11] *Medel v. Court of Appeals*, *supra* note 7 at 489.

effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity,[12] nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets.[13]

Petitioners cannot also raise the defenses of *in pari delicto* and *good faith*. The defense of *in pari delicto* was not raised in the RTC, hence, such an issue cannot be raised for the first time on appeal. Petitioners must have seasonably raised it in the proceedings before the lower court, because questions raised on appeal are confined only within the issues framed by the parties.[14] The defense of good faith must also fail because such an issue is a question of fact[15] which may not be properly raised in a petition for review under Rule 45 of the Rules of Civil Procedure which allows only questions of law.[16]

As well set forth in *Medel*:[17]

> We agree … that the stipulated rate of interest at 5.5% per month on the ₱500,000.00 loan is excessive, iniquitous, unconscionable and exorbitant. However, we can not consider the rate "usurious" because this Court has consistently held that Circular No. 905 of the Central Bank, adopted on December 22, 1982, has expressly removed the interest ceilings prescribed by the Usury Law and that the Usury Law is now "legally inexistent."

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[12] *Dio v. Japor*, G.R. No. 154129, July 8, 2005, 463 SCRA 170, 177.

[13] *Almeda v. Court of Appeals*, G.R. No. 113412, April 17, 1996, 256 SCRA 292, 302.

[14] *Lim v. Queensland Tokyo Commodities, Inc.*, G.R. No. 136031, January 4, 2002, 373 SCRA 31, 41.

[15] *Abad v. Guimba*, G.R. No. 157002, July 29, 2005, 465 SCRA 356, 366.

[16] *Kay Products, Inc. v. Court of Appeals*, G.R. No. 162472, July 28, 2005, 464 SCRA 544, 553.

[17] *Medel v. Court of Appeals, supra* note 7 at 489.

In *Security Bank and Trust Company vs. Regional Trial Court of Makati, Branch 61*, the Court held that CB Circular No. 905 "did not repeal nor in any way amend the Usury Law but simply suspended the latter's effectivity." Indeed, we have held that "a Central Bank Circular can not repeal a law. Only a law can repeal another law." In the recent case of *Florendo vs. Court of Appeals*, the Court reiterated the ruling that "by virtue of CB Circular 905, the Usury Law has been rendered ineffective." "Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon."

Nevertheless, we find the interest at 5.5% per month, or 66% per annum, stipulated upon by the parties in the promissory note iniquitous or unconscionable, and, hence, contrary to morals ("*contra bonos mores*"), if not against the law. The stipulation is void.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision and Resolution dated March 9, 2005 and November 24, 2005, respectively, of the Court of Appeals in CA-G.R. CV No. 82865 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Corona,[*] *Carpio Morales, Velasco, Jr.,* and *Brion, JJ.,* concur.

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[*] Designated as additional member in view of the official leave of absence of Associate Justice Dante O. Tinga.

THIRD DIVISION

[G.R. No. 173333. August 13, 2008]

LUCIA MAGALING, PARALUMAN R. MAGALING, MARCELINA MAGALING-TABLADA, and BENITO R. MAGALING (Heirs of the late Reynaldo Magaling), *petitioners, vs.* **PETER ONG,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; WHEN ALLOWED.— It is basic that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and *vice versa*. There are times, however, when solidary liabilities may be incurred and the veil of corporate fiction may be pierced. Exceptional circumstances warranting such disregard of a separate personality are summarized as follows: "1. When directors and trustees or, in appropriate case, the officers of a corporation; (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director or officer has consented to the issuance of watered down stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto; 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action."

2. ID.; ID.; ID.; ID.; ID.; BAD FAITH BY THE DIRECTOR, TRUSTEE OR OFFICER IN DIRECTING THE CORPORATE AFFAIRS AS GROUND TO PIERCE THE VEIL OF CORPORATE

FICTION, EXPLAINED.— [T]o hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly. Bad faith is a question of fact and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud. x x x [B]ad faith does not arise just because a corporation fails to pay its obligations, because the inability to pay one's obligation is not synonymous with fraudulent intent not to honor the obligations.

3. ID.; ID.; ID.; ID.;ID.; PIERCING THE VEIL OF CORPORATE FICTION FOR REASONS OF NEGLIGENCE BY THE DIRECTOR, TRUSTEE OR OFFICER IN THE CONDUCT OF THE TRANSACTIONS OF THE CORPORATION, ELUCIDATED.— In order to pierce the veil of corporate fiction, for reasons of negligence by the director, trustee or officer in the conduct of the transactions of the corporation, such negligence must be gross. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected; and must be established by clear and convincing evidence. Parenthetically, gross or willful negligence could amount to bad faith.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LAWS, THEORIES, ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Generally, laws, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal and, as such, are deemed to have been waived. Basic consideration of due process impels this rule.

5. ID.; ID.; ID.; OBJECTION TO EVIDENCE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

6. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; NATURE.— A writ of preliminary attachment is a provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of the judgment that may be recovered. The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.

7. ID.; ID.; ID.; ID.; HOW DISSOLVED OR DISCHARGED.— Once the writ of preliminary attachment is issued, the same rule provides for two ways by which it can be dissolved or discharged. *First*, the writ of preliminary attachment may be discharged upon a security given, *i.e.*, a counter-bond. x x x *Second,* said provisional remedy must be shown to have been irregularly or improperly issued. x x x

8. ID.; ID.; ID.; ID.; ID.; THE DISCHARGE OR DISSOLUTION OF THE WRIT SHALL BE GRANTED ONLY AFTER DUE NOTICE AND HEARING.— [W]hen the attachment is challenged for having been illegally or improperly issued, there must be a hearing, with the burden of proof to sustain the writ being on the attaching creditor. That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. It means a fair and open hearing. [T]he discharge or dissolution of x x x writ, whether under Sec. 12 or Sec. 13 of Rule 57 of the Rules

of Court, as amended, shall be granted only "after due notice and hearing."

APPEARANCES OF COUNSEL

De Jesus Linatoc Castillo & Associates for petitioners.
Ng & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, as amended, seeking the reversal of the *Decision*[2] and *Amended Decision*[3] both of the Court of Appeals, dated 31 August 2005 and 28 June 2006, respectively, in CA-G.R. CV No. 70954, entitled, "*Peter Ong v. Spouses Reynaldo Magaling and Lucia Magaling, and Thermo Loans and Credit Corporation.*" The assailed rulings reversed and set aside the *Decision*[4] of the Regional Trial Court (RTC), Branch 13, Lipa City, Batangas, which made petitioner Lucia Magaling, together with her spouse, Reynaldo Magaling,[5] and Termo[6] Loans & Credit Corporation, jointly and

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[1] *Rollo*, pp. 21-30.

[2] Penned by Court of Appeals Associate Justice Josefina Guevara-Salonga with Associate Justices Ruben T. Reyes (now an Associate Justice of this Court) and Fernanda Lampas-Peralta concurring; Annex "A" of the Petition; *rollo*, p. 32-41.

[3] Annex "B" of the Petition; *id.* at 42-44.

[4] Annex "E" of the Petition; *id.* at 59-65. Penned by Judge Jane Aurora C. Lantion.

[5] Reynaldo Magaling passed away on 31 May 2003, during the pendency of the present case before the Court of Appeals. He has since been substituted by his legal heirs, *i.e.*, Lucia Magaling, Paraluman R. Magaling, Marcelina Magaling-Tablada, and Benito R. Magaling.

[6] Referred to in the record of the case as THERMO Loans & Credit Corporation but should be read as TERMO (Loans & Credit Corporation) per the latter's Articles of Incorporation; records, pp. 117-128.

severally liable to respondent Peter Ong for the corporate obligation of the aforenamed corporation as adjudged in the RTC *Decision* dated 23 June 1999.

As culled from the record, the antecedent facts of the present petition are as follows:

On 30 September 1998, respondent Peter Ong (Ong) instituted with the RTC a *Complaint*[7] for the collection of the sum of ₱389,000.00, with interest, attorney's fees and costs of suit, with prayer for issuance of a writ of preliminary attachment against the spouses Reynaldo Magaling and Lucila Magaling (Spouses Magaling) and Termo Loans & Credit Corporation (Termo Loans). The *Complaint* alleged that:

> 3. Defendants Sps. Reynaldo Magaling and Lucila Magaling are the controlling stockholders/owners of Thermo (sic) Loans and Credit Corp. and had used the corporation as mere alter ego or adjunct to evade the payment of valid obligation;
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> 4. On or about December 1994, defendant Reynaldo Magaling, (sic) approached plaintiff in his store at Lipa City and induced him to lend him money and/or his company Thermo (sic) Loans and Credit Corp. with undertaking to pay interest at the rate of two and a half (2 ½%) percent per month. Defendant gave assurance that he and his company Thermo (sic) Loans and Credit Corp. will be able to pay the loan. Without the assurance plaintiff would not have lent the money;
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> 5. Based on the assurance and representation of Reynaldo Magaling, Peter Ong extended loan to defendants. As of September 1997, the principal loan extended to defendants stands at ₱350,000.00. The interest thereon computed at 2 ½ % per month is ₱8,750.00 per month;
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> 6. In acknowledgment of the loan, on or about September 1997, defendants issued and tendered to plaintiff series of postdated checks more particularly described as follows:

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[7] Records, pp. 1-8.

Planters Bank

Check No.	Date	Amount
0473400	Sept. 22, 1997	₱8,750.00
0473401	Oct. 22, 1997	8,750.00
0473402	Nov. 22, 1997	8,750.00
0473403	Dec. 22, 1997	8,750.00
0473404	Jan. 22, 1998	8,750.00
0473405	Feb. 22, 1998	8,750.00
0473406	Feb. 22, 1998	350,000.00

which were issued for payment of interest and principal loan of ₱350,000.00. However, only check nos. 473400 and 473401 were cleared by the bank. Check no. 473402 was likewise dishonored but it was subsequently replaced with cash x x x;

7. Despite demands, oral and written, defendants Sps. Reynaldo and Lucila Magaling and/or Thermo (sic) Loans and Credit Corp. unjustifiably and illegally failed, refused and neglected and still fail, refuse and neglect to pay to the prejudice and damage of plaintiff. As of June 30, 1998, defendants' obligation stands at ₱389,043.96 inclusive of interest;

It was alleged further that Reynaldo Magaling, as President of Termo Loans, together with the corporation's treasurer, a certain Mrs. L. Rosita, signed a *Promissory Note*[8] in favor of Ong for the amount of ₱300,000.00 plus a monthly interest of 2.5%.

Because of the failure of Termo Loans to pay its outstanding obligation despite demand, Ong filed the above-mentioned complaint praying that Spouses Magaling and Termo Loans be ordered to pay, jointly and severally, the principal amount of ₱389,000.00, plus interest, attorney's fees and costs of suit. In addition to the preceding entreaty, Ong asked for the issuance of the writ of preliminary attachment pursuant to Section 1(d), Rule 57 of the Rules of Court, as amended.

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[8] Annex "B" of the Amended Complaint; *rollo*, p. 50.

On 7 October 1998, acting on Ong's prayer for the issuance of a writ of preliminary attachment grounded on the allegation that Spouses Magaling "were guilty of fraud in contracting the obligation subject of the complaint for sum of money"[9]; and finding the same to be impressed with merit, the RTC issued an *Order*[10] directing the issuance of the writ[11] prayed for upon the filing of a bond in the amount of ₱390,000.00.

Meanwhile, on 3 November 1998, Ong moved to amend the above complaint "to correct the name of Lucila Magaling to Lucia Magaling."[12] In an *Order*[13] dated 9 November 1998, the RTC granted the aforesaid motion and admitted Ong's *Amended Complaint*[14] dated 29 October 1998.

In their defense, Spouses Magaling alleged in their *Answer with Counterclaim*[15] dated 12 November 1998, that:

> [P]laintiff (Peter Ong) on its (sic) own invested money with Termo Loans and Credit Corp. x x x without any inducement from answering defendants much less assurance that Termo Loans will be able to pay the loan. Plaintiff got attracted with the rate of interest being given by Termo Loans to money placements and this is the reason why plaintiff, at its own risk, invested money with Termo Loans.
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> x x x x x x x x x
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> The alleged checks appear to have been issued by Termo Loans as a corporation and answering defendants are not even signatories thereto. Furthermore, the Promissory Note x x x was issued by Termo Loans and not by defendants in their individual capacity.

The Spouses Magaling further clarified that:

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[9] Records, p. 11.

[10] *Id.*

[11] *Id.* at 43.

[12] Motion for Leave to Admit Amended Complaint; *id.* at 53-54.

[13] *Id.* at 55.

[14] *Id.* at 49-52.

[15] Annex "D" of the Petition; *rollo,* pp. 53-58.

There could be no fraud on the part of Reynaldo Magaling regarding the post-dated checks because he is not even a signatory thereto. The alleged assurances/warranties to plaintiff are mere after thoughts to make answering defendants personally answerable for corporate obligations of Termo Loans, and to give semblance of merit to plaintiff's application for attachment.

For its part, Termo Loans failed to file an Answer; thus, upon Ong's motion, the RTC declared said corporation in default and allowed Ong to present evidence *ex parte*.

Pursuant to the writ of preliminary attachment earlier issued, and evidenced by the *Sheriff's Return*[16] dated 27 November 1998, the Sheriff[17] of RTC, Br. 13 of Lipa City, caused the attachment of two (2) parcels of land covered by Transfer Certificates of Title No. T-109347 and No. T-75559, both in the names of the Spouses Magaling.

The Spouses Magaling expectedly moved for the reconsideration of the 7 October 1998 Order of the RTC granting the writ of preliminary attachment, arguing that:

> The Writ of Preliminary Attachment x x x was improperly or irregularly issued as there is no existing ground to support the issuance of an attachment.
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> Plaintiff nakedly alleged that the individual defendants are guilty of fraud in contracting the obligation. Nevertheless, a perusal of the Amended Complaint and the annexes thereto readily reveals that the obligation subject of the present case is corporate in character and not personal obligations of the individual defendants.[18]

In an *Order*[19] dated 19 February 1999, the RTC found that Spouses Magaling's *Motion to Discharge Attachment*[20] was impressed with merit based on the following reasons:

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[16] Records, p. 46.

[17] Noel M. Ramos

[18] Records, p. 79.

[19] *Id.* at 105-106.

[20] *Id.* at 75-79.

FIRSTLY, it appears that the obligation was incurred by Termo Loans and Credit Corporation x x x. It is therefore a corporate liability and not the personal obligation of herein movants. As correctly stated by the movants, a corporation has a personality separate and distinct from that of the stockholders and officers.

SECONDLY, the checks which bounced do not bear the signatures of herein movants. It is indeed implausible that movants will give assurances concerning checks they did not sign.

THIRDLY, the obligation appears to have been incurred in 1994 x x x. "Fraud" was alleged in connection with the checks that bounced, and which appear to have been issued only in 1998 by way of renewal of plaintiff's money placement. It appears therefore that if there was indeed fraud, the same was not committed simultaneously with the inception of the obligation.

On 23 June 1999, the RTC promulgated the first of two decisions in this case. Ruling in favor of Ong, and against Termo Loans, the dispositive portion reads:

WHEREFORE, the Court finds for the plaintiff and against the defendant-corporation and hereby orders the latter to pay the former the following amounts:

1. The sum of ₱350,000.00 representing principal obligation;
2. Interest at the rate of 2.5% per month from date of default until full payment (sic)
3. ₱20,000.00 as and for attorney's fees;
4. The expenses of litigation; and
5. The cost of suit.[21]

On 11 August 1999, Ong filed a motion[22] for execution of the above, which the RTC granted[23] on 18 October 1999. The *Writ of Execution*[24] was subsequently issued by the RTC on

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[21] *Rollo*, p. 71.

[22] Records, p. 150.

[23] *Id.* at 168.

[24] *Id.* at 204-A.

1 March 2000. On 26 April 2000, the *Sheriff's Return*[25] was filed before the RTC manifesting that the Writ of Execution earlier issued was being returned unsatisfied in view of the fact that Termo Loans had ceased to exist or had been dissolved.

In a parallel development, trial on the merits concerning Ong's cause of action against the Spouses Magaling ensued.

On 5 February 2001, in complete contrast to its first decision, the RTC promulgated its second decision holding the Spouses Magaling free and clear of any obligation or liability with respect to the sum of money claimed by Ong. The trial court ruled in this wise:

> Records show that the subject obligation is the obligation of defendant corporation. The Non-negotiable Promissory Note No. 551 dated November 25, 1994 (Exh. B, p. 3) evidencing plaintiff's money placement belongs to/or is owned by defendant Thermo (sic) Loans and Credit Corporation. Defendant Reynaldo Magaling only signed said Promissory Note in his capacity as President of the corporation. Even plaintiff's documentary evidence shows that the obligation subject matter of the instant case is a corporate one for which the stockholders and officers of Thermo (sic) Loans and Credit Corporation are not personally answerable. For being its President, defendant Magaling's act of convincing the plaintiff in investing money with the corporation granting without admitting it to be true is an act in usual course of business of said corporation. Thus, Thermo (sic) Loans and Credit Corporation has a personality separate and distinct from that of Reynaldo Magaling who happens to be only a stockholder thereof and president at that time.
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> x x x x x x x x x
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> Furthermore, the Planters Development Bank Checks (Exh. A – A-3) which were allegedly issued by defendant Reynaldo Magaling to herein plaintiff were corporate checks under the account name of Thermo (sic) Loans and Credit Corporation with defendant Reynaldo Magaling not even a signatory thereof. In fact, plaintiff's demand letter dated February 24, 1998 (Exh. F) is addressed to the corporation and not to Reynaldo Magaling. A stockholder as a rule is not directly, individually and/or personally liable for the indebtedness of the

[25] *Id.* at 204-B.

corporation (citation omitted). Hence, Reynaldo Magaling being a mere stockholder of Thermo (sic) Loans and Credit Corporation cannot be held personally liable for the corporate debt incurred by it.[26]

The *fallo* of the foregoing decision thus states:

> WHEREFORE, foregoing premises considered, the instant Complaint against defendants-spouses Magaling is hereby DISMISSED for lack of merit.[27]

Ong appealed the instant case to the Court of Appeals.

In a *Decision* dated 31 August 2005, the appellate court reversed and set aside the ruling of the RTC, *viz*:

> WHEREFORE, the foregoing considered, the instant appeal is hereby GRANTED. The assailed decision is REVERSED and SET ASIDE and a new one entered declaring appellee spouses Magaling jointly and severally liable to appellant Peter Ong for the corporate obligation of Thermo (sic) Loans adjudged in the decision of the trial court dated 23 June 1999.[28]

The Court of Appeals, in reversing the 5 February 2001 Decision of the RTC, found that the general rule that corporate officers cannot be held personally liable for corporate debt when they act in good faith and within the scope of their authority in executing a contract for and in behalf of the corporation, cannot apply to the spouses Magaling. The Court of Appeals pierced the veil of corporate fiction and held the spouses Magaling solidarily liable with Termo Loans for the corporate obligations of the latter since it found that Reynaldo Magaling was grossly negligent in managing the affairs of the said corporation.

The Spouses Magaling moved for the reconsideration of the aforequoted decision. But not to be outdone, Ong likewise filed a motion for reconsideration, albeit partial, that is, insofar as the issue of the propriety of the discharge of the writ of preliminary attachment was concerned.

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[26] *Rollo,* pp. 63-64.

[27] *Id.* at 65.

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

The Spouses Magaling's motion for reconsideration was denied by the Court of Appeals in its *Amended Decision* dated 28 June 2006. Deciding affirmatively on Ong's propositions, the Court of Appeals explained in the same *Amended Decision* that:

> With respect to appellant's prayer, he invited Our attention to his assignment of error in his Appellant's Brief where he sought the nullification of the Order of the trial court discharging the writ of attachment. He argued that the said Order granting such discharge had the effect of prejudging the merits of the case at a time when Thermo (sic) Loans and Credit Corp. had not even filed its answer to the complaint. Indeed, We find that such discharge, even before the issues were joined, prematurely adjudicated the merits of the case on the lack of personal liability of appellees, and without the latter even posting a counter bond. Therefore, as prayed for by appellant, the discharge of attachment is declared illegal and the writ of attachment is declared effective and subsisting.[29]

And the dispositive part of the *Amended Decision* provides:

> WHEREFORE, the foregoing considered, the partial motion for reconsideration of appellant is GRANTED. Accordingly, the Order discharging the writ of attachment is SET ASIDE and the Writ of Attachment is hereby declared effective and subsisting. Appellees' motion for reconsideration is DENIED.[30]

Hence, the present petition premised on the following arguments[31]:

I.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION IN RELYING ON A GROUND RAISED ONLY FOR THE FIRST TIME ON APPEAL, TO MAKE REYNALDO MAGALING PERSONALLY LIABLE FOR CORPORATE LIABILITY; and

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[29] *Id.* at 43.

[30] *Id.*

[31] *Id.* at 24-26.

II.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION IN REINSTATING THE PRELIMINARY ATTACHMENT.

At the outset, we note that while the instant suit is denominated as a "Petition for Review on *Certiorari,*" under Rule 45 of the Revised Rules of Court, the allegations for the allowance of this petition are that the appellate court committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the decision dated 5 February 2001 of the RTC. This is a procedural error. This being an appeal by *certiorari,* under Rule 45 of the Revised Rules of Court, this Court's power to review is generally limited to questions of law and errors of judgment.[32] Under this mode of appeal, this Court is precluded from entertaining errors of jurisdiction or grave abuse of discretion – a question which may be appropriately addressed through a petition for *certiorari* under Rule 65 of the Revised Rules of Court. In any case, to put an end to the present controversy, in accordance with the liberal spirit pervading the Revised Rules of Court and in the interest of justice, this Court decided to treat the present petition for *certiorari* as an appeal by *certiorari*, considering that it was filed[33] within 15 days from receipt of the *Amended Decision* of the Court of Appeals denying petitioners' motion for reconsideration.

In the case at bar, the Spouses Magaling claim that the Court of Appeals gravely abused its discretion when it (1) held the Spouses Magaling equally liable with Termo Loans with regard to the financial liability of the latter; and (2) reinstated the writ of preliminary attachment.

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[32] *Tañedo v. Court of Appeals*, 322 Phil. 84, 95 (1996).

[33] Court of Appeals *Amended Decision* dated 28 June 2006 was received on 6 July 2006; on 19 July 2006, petitioners moved for an additional 15 days within which to file the petition, or until 21 August 2006; on 26 July 2006, petitioners filed the petition.

In ruling against the Spouses Magaling on the sole issue of whether or not they "may be held personally liable for the corporate obligation of Thermo (sic) Loans in favor of Peter Ong,"[34] the Court of Appeals debunked the ratiocination of the RTC that "the checks issued by appellee Reynaldo Magaling were all corporate checks under the account name of Thermo (sic) Loans to which he was not even a signatory (of) x x x (and) that the demand letter was addressed to Thermo (sic) Loans and not to Reynaldo Magaling."[35] It took note of the following:

> Appellee Reynaldo Magaling testified that as president of Thermo (sic) Loans from 1994 up to 1997, it was his duty and responsibility to supervise the personnel and the operation of the corporation. (Citation omitted.) The Articles of Incorporation of Thermo (sic) Loans where he was incorporator and director states its primary purpose was to engage in the business of a lending investor, lending money to persons and entities under the terms and conditions allowed by law. Renaldo (sic) Magaling likewise admitted that there are other twenty more different companies also dealing in financing or lending business. (Citation omitted.) Thus, while it is true that there may have been no fraud at the inception of the transaction with appellant Peter Ong, and from 1994 to 1997, he was paid his monthly interest of 2.5% on his investment or ₱8,750.00 monthly, the degree of diligence required of Reynaldo Magaling as director and president of Thermo (sic) Loans was not shown to have been exercised by him as expected from the highest officer of the said company.
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> Reynaldo Magaling resigned as president of Thermo (sic) Loans in 1998 when the company already became insolvent. He admitted that when he resigned, nobody took over as president of the company. Neither were the investors informed about the bankruptcy thereof, and nor was any bankruptcy or insolvency or suspension of payments proceedings instituted to protect the assets of the corporation and the interest of its investors. As director and president of the company, he seemed to know nothing at all about its operations, nor could he produce any financial document like the company's financial statement, and in his own words, he conveniently gave all the responsibilities to the manager x x x.

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[34] Court of Appeals' Decision, p. 6; *rollo*, p. 11.

[35] Court of Appeals' Decision, p. 7; *id.* at 12.

Considering the nature of the business of Thermo (sic) Loans and other lending companies of appellee Reynaldo Magaling. It behooved him to have exercised utmost diligence in running the affairs of Thermo (sic) Loans to protect its interest and its investors. Miserably, he failed in this respect that the trial court even commented that he seemed not to know anything about the operation of his business. (Citation omitted.)

It then concluded that:

Clearly, Reynaldo Magaling was grossly negligent in directing the affairs of Thermo (sic) Loans without due regard to the plight of its investors and thus should be held jointly and severally liable for the corporate obligation of Thermo (***sic***) Loans to appellant Peter Ong.[36]

In asking this Court to reverse and set aside the above-quoted *Decision*, as well as the *Amended Decision*, of the Court of Appeals, the petitioners contend that the appellate court failed to appreciate several important facts: 1) that the issue of whether or not a corporate debt or credit can be the debt or credit of a stockholder was alleged for the first time on appeal; 2) that "the *Amended Complaint* did not allege that Reynaldo Magaling was guilty of gross negligence or bad faith in directing the affairs of the corporation"[37]; 3) that the solvency of Termo Loans was never put in issue or raised by Ong; and 4) that negligence "is not one of the grounds provided for by Rule 57 of the Rules of Court that will warrant (the) issuance of preliminary attachment."[38]

Ong, in traversing the allegations in support of the present petition, argues in his *Comment* that he brought up the issue of Reynaldo Magaling's negligence in managing the affairs of Termo Loans in his Memorandum before the RTC where he stated that:

Being President, it is incumbent upon Reynaldo Magaling to know the financial condition of his company. He was found wanting and

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[36] Court of Appeals' Decision, pp. 8-9; *id.* at 13-14.

[37] Petition, p. 5; *id.* at 25.

[38] Petition, p. 7; *id.* at 27.

did not know the financial condition of his company. How many creditors does the company have? He was supposed to know that as President but he does not know. One glaring fact that stands out is that these creditors are left with an empty bag and cannot collect because of the negligence of Reynaldo Magaling in running his financing companies.[39]

From the preceding arguments and counter-arguments, the threshold issues proper for this Court's consideration are, given the facts of the case, whether or not the Court of Appeals erred in: 1) making the Spouses Magaling and Termo Loans jointly and severally liable to Ong for the obligation incurred by the corporation; and 2) reinstating the writ of preliminary attachment issued against two (2) real properties of the Spouses Magaling.

The petition is not meritorious.

It is basic that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[40] The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and *vice versa*.

There are times, however, when solidary liabilities may be incurred and the veil of corporate fiction may be pierced. Exceptional circumstances warranting such disregard of a separate personality are summarized as follows:

1. When directors and trustees or, in appropriate case, the officers of a corporation;

(a) vote for or assent to patently unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

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[39] Records, p. 237.

[40] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, 23 January 2007, 512 SCRA 227.

(c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; [41]

2. When a director or officer has consented to the issuance of watered down stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;[42]

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation;[43] or

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[44]

In making the Spouses Magaling co-defendants of Termo Loans, Ong alleged in his Complaint for Sum of Money filed with the RTC that the spouses Reynaldo Magaling and Lucia Magaling were the controlling stockholders and/or owners of Termo Loans, and that they had used the corporation to evade the payment of a valid obligation. The appellate court eventually found the Spouses Magaling equally liable with Termo Loans for the sum of money sought to be collected by Ong.

As explained above, to hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly. Bad faith is a question of fact and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud.[45]

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[41] Sec. 31, Corporation Code.

[42] Sec. 65, Corporation Code.

[43] *De Asis and Co., Inc. v. Court of Appeals*, G.R. No. 61549, 27 May 1985, 136 SCRA 599.

[44] Exemplified in Article 144, Corporation Code; See also Sec. 13, Presidential Decree 115 entitled, "The Trust Receipts Law."

[45] *McLeod v. National Labor Relations Commission, supra* note 40.

In the present case, there is nothing substantial on record to show that Reynaldo Magaling, as President of Termo Loans, has, indeed, acted in bad faith in inviting Ong to invest in Termo Loans and/or in obtaining a loan from Ong for said corporation in order to warrant his personal liability. From all indications, the proceeds of the investment and/or loan were indeed utilized by Termo Loans. Likewise, bad faith does not arise just because a corporation fails to pay its obligations, because the inability to pay one's obligation is not synonymous with fraudulent intent not to honor the obligations.[46]

The foregoing discussion notwithstanding, this Court still cannot totally absolve Reynaldo Magaling from any liability considering his gross negligence in directing the affairs of Termo Loans; thus, he must be made personally liable for the debt of Termo Loans to Ong.

In order to pierce the veil of corporate fiction, for reasons of negligence by the director, trustee or officer in the conduct of the transactions of the corporation, such negligence must be gross. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected;[47] and must be established by clear and convincing evidence. Parenthetically, gross or willful negligence could amount to bad faith.[48]

In the case at bar, in their *Memorandum* filed before the RTC, the Spouses Magaling argued that "the *Amended Complaint* did not allege that Reynaldo Magaling was guilty of gross negligence or bad faith in directing the affairs of the corporation"; and that respondent Ong was not able to adduce evidence to

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[46] *Adlawan v. Torres*, G.R. Nos. 65957-58, 5 July 1994, 233 SCRA 645, 655.

[47] *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 687-688.

[48] *Fores v. Miranda*, 105 Phil. 266, 276.

offset the effect of the particular allegation. Hence, they insist that it was unfair for the appellate court to conclude that Reynaldo Magaling failed to exercise the necessary diligence in running Termo Loans.

We disagree.

Petitioners' argument is that Ong failed to actually allege in the complaint Reynaldo Magaling's gross negligence in running Termo Loans as basis for making the subject sum of money a personal liability of Reynaldo. For them, it is, thus, too late in the day to raise the alleged gross negligence of Termo Loans' President, Reynaldo Magaling, as this matter has not been pleaded before the RTC. Or simply put, issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred for being violative of basic due process.

Generally, laws, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal[49] and, as such, are deemed to have been waived. Basic consideration of due process impels this rule.[50] In the case at bar, however, the issue respecting Reynaldo Magaling's gross negligence was seasonably raised in the proceedings before the RTC. The testimonial evidence elicited from Reynaldo Magaling himself during his cross-examination in the RTC bears out his wanton disregard of the transactions of Termo Loans, particularly in consideration of the fact that he was the latter's President.

It cannot be said that the Spouses Magaling were not given an opportunity to refute the issue of his supposed gross negligence in directing the affairs of Termo Loans when the same, having been established by his own testimony during cross-examination, could have been objected to at the time it was made. Objection

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[49] *Eastern Assurance & Surety Corporation v. Land Transportation Franchising and Regulatory Board*, 459 Phil. 395, 415 (2003).

[50] *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, 445 Phil. 465, 478 (2003).

to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal. That the Spouses Magaling were not able to present evidence to the contrary was solely due to the ineffectiveness of their counsel in rebutting the evidence unearthed and brought to light during the witness' presentation in court. Their counsel could have clarified in the re-direct examination the matters revealed during cross-examination, but he did not do so.

Reynaldo Magaling's gross negligence became apparent, undeniable and proven during the course of the proceedings in the trial court. Reynaldo Magaling was the lone witness presented in court to belie the claim of Ong. On cross-examination, he (Reynaldo Magaling) clearly and plainly shed light on how Termo Loans was run under his aegis, to wit:

ATTY. NG:

Q. Mr. witness, this company that you have, this Flagship Lending Corporation, you said … When was this established, Mr. witness?

A. I think it is in 1998, more or less, sir.

Q. 1998. How about this First Solid Lending Corporation, when was this put up?

A. ***I cannot remember also when it started operating, sir.***

COURT:

Q. So, when did you first realize that you have difficulty in receiving payments from borrowers?

A. In the later part of …

Q. 19 ...?

A. In 1998, Your Honor.

Q. And in 1998 you did not tell Peter Ong that there was difficulty in receiving payments from the borrowers?

A. He knew about it, Your Honor.

Q. You cannot presume that the investor knows that you have difficulty. You have to tell the investor. Did you tell him?

A. It was told to him by our manager, what was happening, Your Honor.

Q. Your Manager. But you, yourself did not tell him?

A. ***I cannot remember, Your Honor.***

COURT:

Q. So, there was absolutely no occasion for you to tell him even in passing in his store that there is danger in the ₱300,000.00 investment?

A. ***No, Your Honor.***

Q. How about the other investors? Did you not also tell them of such a situation that you were in in your company?

A. ***No, Your Honor.***

Q. Why not?

A. ***I did not tell that to investors, what is going on for fear that they might be afraid of what is happening, Your Honor.***[51]

x x x x x x x x x

ATTY. NG:

Q. Mr. Witness, was there a formal bankruptcy proceedings filed in dissolving the company?

x x x x x x x x x

WITNESS:

A. ***I do not know, sir.***

ATTY. NG:

Q. Being the President, you do not know or you refused to

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[51] TSN, 22 June 2000, pp. 51-53.

know?

A. No, sir. I resigned at that time in 1998, sir.

COURT:

Q. And who took over as President?

A. ***Nobody took over, Your Honor.***

Q. How about the investors? Did they get all their money?

WITNESS:

A. ***I do not know, Your Honor.***

ATTY. NG:

Q. As of the time that you were still the President, were there other investors in the company, is it not, aside from Peter Ong?

A. Yes, sir.

Q. Do you know how much was the investment of the other persons aside from Peter Ong?

x x x x x x x x x

WITNESS:

A. Like me, I have invested, sir.

ATTY. NG:

Q. How much?

A. ₱1.8 Million, sir.

Q. That is your share in the company?

A. No. That is not a share, sir.

Q. So, that is your investment in the company?

A. That is my investment, sir.

Q. How about the other persons who also invested money with your company?

A. ***I do not know that, sir.***

Q. Can you produce the financial statement of Thermo (sic) Loans,

Mr. witness?

A. (No answer).

COURT:

Q. So, as President, you do not know who are the other investor?

A. I know the Directors, but the other investors, I do not know, Your Honor.

Q. Who is in-charged (sic) of the company?

A. As of now, Your Honor?

Q. As of now?

A. Our manager, Your Honor.

ATTY. NG:

Q. But because you were the President, you also supervised your manager, is it not?

A. Yes, sir.

Q. To your knowledge, can you name some of the other persons who also invested in your company, if you know?

A. Yes, sir.

Q. Can you name them?

A. The Directors listed there, sir.

Q. How much did the Directors invest in this company?

A. ***That I do not know, sir.***

COURT:

Q. Upon insolvency, the fact that Thermo (sic) Loans became insolvent in 1998, did all the investors get their money?

A. Many are saying that they will get their money, Your Honor.

Q. But did they actually get their money investment?

A. The others were not able to get back, Your Honor.

Q. Did they file a case against you?

A. No charges were filed against me, Your Honor.

Q. How about Thermo (sic) Loans?

A. ***I do not know, Your Honor.***

Q. So, this is the only case filed by an investor against Thermo (sic) Loans?

A. Yes, Your Honor.

ATTY. NG:

Q. Mr. Witness, going back to your relationship with Mr. Peter Ong, were you the one who convinced Peter Ong to invest in your company, the Thermo (sic) Loans?

A. ***I do not remember that, sir.***

COURT:

Q. But you talked to him about the interest and the principal?

A. Yes, Your Honor.

Q. But you did not mention to him that you have other lending companies?

A. ***In that matter, I do not remember, Your Honor.***

ATTY. NG:

Q. Mr. Witness, when this company, Thermo (sic) Loans pulled (sic) it up, "*nagsarado*," it was a *de facto*, there was no…. who got hold of the assets of the company?

A. ***I do not know that, sir.***

Q. Why?

A. ***Because I am not only attending to that company, I have so many other companies, sir.***

COURT:

Q. You did not go after your ₱1.8 Million?

A. ***Nomore (sic), Your Honor, because "ako'y kinukunsensya rin ng aking sarili, bilang Katoliko'y ayaw ko nang makasali pa sa ibang bagay na sa banda roo'y pera lang***

ho iyon.”

Q. “*Nakukunsiyensya ka*” but you were not being bothered for the money of the other investors? How can that be? Your conscience bothers you?

A. ***If I will think about it, I might get sick. I did not bother to run after my investment for reason of health*** x x x.

ATTY. NG:

Q. Okay, Mr. Witness, considering that you are a businessman engaged in similar lines of lending company and being the President, the former President of Themo (sic) Loans, you had … you were furnished with final… with financial statement of the company was it not?

A. ***I do not remember that, sir.***

COURT:

Q. You did not call a meeting of the Directors and other stock holders that your company is going down?

A. ***No more, Your Honor, because no Directors attended the meeting.***

Q. But you called a meeting?

A. Yes, Your Honor. I called a meeting but nobody attended the meeting.

ATTY. NG:

Q. Where are now the financial records of the company?

A. ***That I do not know, sir.***

Q. How about your own personal records? Your personal copy of the financial statement of the company, considering that your classification in Rotary Club is financial services?

A. ***I do not know where it was placed, sir.***

Q. So, you are telling this Court that you cannot produce anymore the financial statement related to this company, is it?

A. No, sir. Not like that.

Q. Where you tried to retrieve or will you try to retrieve the financial

statement of this company?

A. ***I gave all the responsibilities to the manager, sir.***[52]

Reynaldo Magaling's very own testimony gave reason for the appellate court's finding of gross negligence on his part. Instead of the intended effect of refuting the supposition that Termo Loans was assiduously managed, Reynaldo Magaling's foregoing testimony only convincingly displayed his gross negligence in the conduct of the affairs of Termo Loans. From our standpoint, his casual manner, insouciance and nonchalance, *nay*, indifference, to the predicament of the distressed corporation glaringly exhibited a lackadaisical attitude from a top office of a corporation, a conduct totally abhorrent in the corporate world.

Reynaldo Magaling is not a novice in the field of commerce. He is a seasoned businessman running several lending companies. During his cross-examination, he admitted that he had, aside from Termo Loans, various other lending companies, to wit:

ATTY. NG:

Q. Mr. witness, you said that you are a businessman by profession?

WITNESS:

A. Yes, sir.

x x x x x x x x x

ATTY. NG:

Q. In 1994 when you got this alleged investment from Peter Ong, what were the businesses that you own or control at that time?

x x x x x x x x x

WITNESS:

A. I did not receive the investment of Peter Ong, it was the company who received, sir.

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[52] *Id.* at 53-62.

ATTY. NG:

Q. Okay. ***But what were your businesses that you had at that time?***

A. ***Lending companies, sir.***

Q. What are the names of that lending companies that you had?

A. ***Thermo Loans***, sir.

Q. Aside from Thermo Loans?

A. ***First Solid Lending Company***, sir.

Q. What else?

A. ***Mediator Lending Company***, sir.

Q. What else?

A. ***Beneficial Lending Company***, sir.

Q. What else?

A. ***Vintage Lending Company***, sir.

Q. What else?

A. ***New Profile Lending Company***, sir.

Q. What else?

A. ***Smart Cash Lending Company***, sir.

Q. What else?

A. ***Cash Line Lending Company***, sir.

Q. What else?

A. ***Insight Lending Company***, sir.

Q. What else?

A. ***Antigo Lending Company***, sir.

Q. What else?

A. ***Flagship Lending Company***, sir.

Q. What else?

COURT:

Q. ***So, what happened to all these lending companies now?***

A. They are okay, Your Honor.

ATTY. NG:

Q. Do you mean to tell this Honorable Court that all these companies are now doing well and still existing including Thermo Loans?

A. Thermo Loans was insolvent at that time, sir. But you did not ask those insolvent. ***I have so many companies that are already insolvent. But you did not ask about the company that are solvent.***

COURT:

Q. ***Among those companies which you mentioned, which of those are solvent and which are not?***

A. All of those I mentioned except Thermo Loans, Your Honor.[53]

x x x x x x x x x

COURT:

Q. And Peter Ong could have not parted with the Three Hundred Thousand pesos (₱300,000.00) investment if he did not talk to you?

A. He talked to me, Your Honor.

ATTY. NG:

Q. He talked to you? Now, that you admitted ….

COURT:

Q. Who was the one who made the offer for him to invest? Was he the one who voluntarily invested the money or you were the one who convinced him to invest the P300,000.00 money to Thermo Loans Lending and Credit Corporation?

A. I cannot remember, Your Honor, because due to the lapse of time. It was in 1994.[54]

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[53] *Id.* at 27-33.

[54] *Id.* at 42.

x x x x x x x x x

COURT:

Q. So, what you are saying now is that, your manager and Peter Ong made preliminary talks about Peter Ong investing in Thermo Loans and Credit Corporation and thereafter, you also talked with Peter Ong about Peter Ong's investing in Thermo Loans?

A. Yes, Your Honor.

Q. What about after that?

A. After four (4) years … that investment was in 1994 up to 1998, Your Honor, and this last … in the year 1999, the corporation became insolvent, Your Honor.[55]

x x x x x x x x x

ATTY. NG:

x x x x x x x x x

Q. What happened when … Mr. witness, how did Thermo Loans become bankrupt?

A. The reason is that, the borrowers did not pay, sir.[56]

Accordingly, the Court of Appeals observed correctly when it succinctly stated that, "[c]learly, Reynaldo Magaling was grossly negligent in directing the affairs of Thermo (sic) Loans without due regard to the plight of its investors and thus should be held jointly and severally liable for the corporate obligation of Thermo (sic) Loans to appellant Peter Ong."

On the propriety of the RTC's discharge of the preliminary attachment, we hew to the provisions of the law and jurisprudence.

A writ of preliminary attachment is a provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the

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[55] *Id.* at 45-46.

[56] *Id.* at 49.

court as security for the satisfaction of the judgment that may be recovered.[57] The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[58]

For the provisional remedy to issue, Sec. 1, Rule 57 of the Rules of Court, as amended, provides that:

SECTION 1. *Grounds upon which attachment may issue.* – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

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[57] *Davao Light and Power Co., Inc. v. Court of Appeals*, G.R. No. 93262, 29 November 1991, 204 SCRA 343, 349.

[58] *Chemphil Export & Import Corp. v. Court of Appeals*, G.R. Nos. 112438-39, 12 December 1995, 251 SCRA 257, 284.

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

Once the writ of preliminary attachment is issued, the same rule provides for two ways by which it can be dissolved or discharged.

First, the writ of preliminary attachment may be discharged upon a security given, *i.e.*, a counter-bond, *viz*:

SEC. 12. *Discharge of attachment upon giving counter-bound.* – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. **The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs**. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment. (Emphasis supplied.)

Second, said provisional remedy must be shown to have been irregularly or improperly issued, to wit:

SEC. 13. *Discharge of attachment on other grounds.* – The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment **on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient**. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. **After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.** (Emphasis supplied.)

In the case at bar, there is no question that no counter bond was given by the Spouses Magaling for the discharge or dissolution of the writ of preliminary attachment, as their position is that the provisional remedy was irregularly or improperly issued. They sought the discharge or dissolution of the writ based on Sec. 13, Rule 57 of the Rules of Court, as amended. Under said provision, when the attachment is challenged for having been illegally or improperly issued, there must be a hearing, with the burden of proof to sustain the writ being on the attaching creditor.[59] That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. It means a fair and open hearing.[60] Herein, there is no showing that a hearing was conducted prior to the issuance of the 19 February 1999 Order of the RTC discharging or dissolving the writ of preliminary attachment. That Ong was able to file an opposition to the

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[59] *Benitez v. Intermediate Appellate Court*, G.R. No. 71535, 15 September 1987, 154 SCRA 41, 46; *Peroxide Philippines Corp. v. Court of Appeals*, G.R. No. 92813, 31 July 1991, 199 SCRA 882, 891.

[60] *Monson v. Secretary of Agriculture*, No. 81 F.S.C., April 28, 1938, cited in Martin, *Constitutional Law*, 1988 Ed., 233; cited in *Peroxide Philippines Corp. v. Court of Appeals*, *id.*

motion of the Spouses Magaling to discharge the preliminary attachment is of no moment. The written opposition filed is not equivalent to a hearing. The absence of a hearing before the RTC bars the discharge of the writ of preliminary attachment for the simple reason that the discharge or dissolution of said writ, whether under Sec. 12 or Sec. 13 of Rule 57 of the Rules of Court, as amended, shall be granted only "after due notice and hearing."

WHEREFORE, premises considered, the instant petition is *DENIED*. Accordingly, the assailed 31 August 2005 *Decision* and 28 June 2006 *Amended Decision,* both of the Court of Appeals in CA-G.R. CV No. 70954, are hereby *AFFIRMED*. Costs against petitioners, heirs of Reynaldo Magaling.

SO ORDERED.

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

Tinga,[*] *J.,* in the result.

THIRD DIVISION

[G.R. No. 174350. August 13, 2008]

SPOUSES BERNYL BALANGAUAN & KATHERENE BALANGAUAN, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, SPECIAL NINETEENTH (19TH) DIVISION, CEBU CITY & THE HONGKONG AND SHANGHAI BANKING CORPORATION, LTD.,** *respondents.*

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[*] Designated as an additional member in place of Associate Justice Ruben T. Reyes who concurred in the Court of Appeals decision.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE TREATED AS A PETITION FOR REVIEW ON *CERTIORARI*; CONDITION; CASE AT BAR.— It is elementary in remedial law that a writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy. And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; this exception is not applicable to the present factual milieu. Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court: "SEC. 2. *Time for filing; extension*.— The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x." A party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from receipt of the judgment, final order or resolution sought to be appealed. In this case, petitioners Bernyl and Katherene's motion for reconsideration of the appellate court's Resolution was denied by the Court of Appeals in its *Resolution* dated 29 June 2006, a copy of which was received by petitioners on 4 July 2006. The present petition was filed on 1 September 2006; thus, at the time of the filing of said petition, 59 days had elapsed, way beyond the 15-day period within which to file a petition for review under Rule 45, and even beyond an extended period of 30 days, the maximum period for extension allowed by the rules had petitioners sought to move for such extra time. As the facts stand, petitioners Bernyl and Katherene had lost the right to appeal *via* Rule 45.

2. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; EXPLAINED.— [G]rave abuse of discretion may arise when a lower court or tribunal violates and contravenes the Constitution,

the law or existing jurisprudence. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE.— It must be remembered that a preliminary investigation is not a quasi-judicial proceeding, and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. In *Bautista v. Court of Appeals*, this Court held that a preliminary investigation is not a quasi-judicial proceeding, thus: "[T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal." Though some cases describe the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point. A quasi-judicial body is an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication

or rule-making. A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an Information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the former's order or resolutions. In this case, since the DOJ is not a quasi-judicial body, Section 14, Article VIII of the Constitution finds no application. Be that as it may, the DOJ rectified the shortness of its first resolution by issuing a lengthier one when it resolved respondent HSBC's motion for reconsideration.

4. ID.; ID.; ID.; PROBABLE CAUSE; DEFINED.— Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

5. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; FUNCTION.— The executive department of the government is accountable for the prosecution of crimes, its principal obligation being the faithful execution of the laws of the land. A necessary component of the power to execute the laws is the right to prosecute their violators, the responsibility for which is thrust upon the DOJ. Hence, the determination of whether or not probable cause exists to warrant the prosecution in court of an accused is consigned and entrusted to the DOJ. And by the nature of his office, a public prosecutor is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. But this is not to discount the possibility of the commission of abuses on the part of the prosecutor. It is entirely possible that the investigating prosecutor has erroneously exercised the discretion lodged in him by law. This, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

6. REMEDIAL LAW; COURTS; WILL NOT INTERFERE IN THE CONDUCT OF PRELIMINARY INVESTIGATIONS; EXCEPTION.— [W]hile it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, we have nonetheless made some exceptions to the general rule, such as when the acts of the officer are without or in excess of authority, resulting from a grave abuse of discretion. Although there is no general formula or fixed rule for the determination of probable cause, since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge (public prosecutor) or run counter to the clear dictates of reason.

APPEARANCES OF COUNSEL

Noel D. Archival for petitioners.
Balgos & Perez for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assailing the *28 April 2006 Decision*[1] and *29 June 2006 Resolution*[2] of the Court of Appeals in CA-G.R. CEB-SP No. 00068, which annulled and set aside the *6 April 2004*[3] and *30 August 2004*[4] *Resolutions* of the Department of Justice (DOJ) in I.S. No. 02-9230-I, entitled *"The Hongkong and Shanghai Banking Corporation v.*

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[1] Annex "L" of the Petition; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.; *rollo*, pp. 199-205.

[2] Annex "O" of the Petition; *id.* at 178-179.

[3] Annex "G" of the Petition; *id.* at 122-123.

[4] Annex "H" of the Petition; *id.* at 125-127.

Katherene Balangauan, et al." The twin resolutions of the DOJ affirmed, in essence, the *Resolution* of the Office of the City Prosecutor,[5] Cebu City, which dismissed for lack of probable cause the criminal complaint for Estafa and/or Qualified Estafa, filed against petitioner-Spouses Bernyl Balangauan (Bernyl) and Katherene Balangauan (Katherene) by respondent Hong Kong and Shanghai Banking Corporation, Ltd. (HSBC).

In this Petition for *Certiorari*, petitioners Bernyl and Katherene urge this Court to "reverse and set aside the Decision of the Court of Appeals, Special nineteenth (sic) [19th] division (sic), Cebu City (sic) and accordingly, dismiss the complaint against the [petitioners Bernyl and Katherene] in view of the absence of probable cause to warrant the filing of an information before the Court and for utter lack of merit."[6]

As culled from the records, the antecedents of the present case are as follows:

Petitioner Katherene was a *Premier Customer Services Representative* (PCSR) of respondent bank, HSBC. As a PCSR, she managed the accounts of HSBC depositors with *Premier Status*. One such client and/or depositor handled by her was Roger Dwayne York (York).

York maintained several accounts with respondent HSBC. Sometime in April 2002, he went to respondent HSBC's Cebu Branch to transact with petitioner Katherene respecting his Dollar and Peso Accounts. Petitioner Katherene being on vacation at the time, York was attended to by another PCSR. While at the bank, York inquired about the status of his time deposit in the amount of ₱2,500,000.00. The PCSR representative who attended to him, however, could not find any record of said placement in the bank's data base.

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[5] By Assistant City Prosecutor Victor C. Laborte, Prosecutor II, Office of the City Prosecutor, Cebu City; *id.* at 68-72.

[6] *Id.* at 34.

York adamantly insisted, though, that through petitioner Katherene, he made a placement of the aforementioned amount in a higher-earning time deposit. York further elaborated that petitioner Katherene explained to him that the alleged higher-earning time deposit scheme was supposedly being offered to Premier clients only. Upon further scrutiny and examination, respondent HSBC's bank personnel discovered that: (1) on 18 January 2002, York pre-terminated a ₱1,000,000.00 time deposit; (2) there were cash movement tickets and withdrawal slips all signed by York for the amount of ₱1,000,000.00; and (3) there were regular movements in York's accounts, *i.e.*, beginning in the month of January 2002, monthly deposits in the amount of ₱12,500.00 and ₱8,333.33 were made, which York denied ever making, but surmised were the regular interest earnings from the placement of the ₱2,500,000.00.

It was likewise discovered that the above-mentioned deposits were transacted using petitioner Katherene's computer and work station using the code or personal password "CEO8." The significance of code "CEO8," according to the bank personnel of respondent HSBC, is that, "[i]t is only Ms. Balangauan who can transact from [the] computer in the work station CEO-8, as she is provided with a swipe card which she keeps sole custody of and only she can use, and which she utilizes for purposes of performing bank transactions from that computer."[7]

Bank personnel of respondent HSBC likewise recounted in their affidavits that prior to the filing of the complaint for estafa and/or qualified estafa, they were in contact with petitioners Bernyl and Katherene. Petitioner Bernyl supposedly met with them on two occasions. At first he disavowed any knowledge regarding the whereabouts of York's money but later on admitted that he knew that his wife invested the funds with Shell Company. He likewise admitted that he made the phone banking deposit to credit York's account with the ₱12,500.00 and the ₱8,333.33 using their landline telephone. With respect to petitioner Katherene, she allegedly spoke to the bank personnel and York

[7] Affidavit of Debbie Marie Dy, Assistant Vice-President of respondent HSBC's Cebu Branch; *id.* at 44.

on several occasions and admitted that the funds were indeed invested with Shell Company but that York knew about this.

So as not to ruin its name and goodwill among its clients, respondent HSBC reimbursed York the ₱2,500,000.00.

Based on the foregoing factual circumstances, respondent HSBC, through its personnel, filed a criminal complaint for Estafa and/or Qualified Estafa before the Office of the City Prosecutor, Cebu City.

Petitioners Bernyl and Katherene submitted their joint counter-affidavit basically denying the allegations contained in the affidavits of the aforenamed employees of respondent HSBC as well as that made by York. They argued that the allegations in the Complaint-Affidavits were pure fabrications. Specifically, petitioner Katherene denied 1) having spoken on the telephone with Dy and York; and 2) having admitted to the personnel of respondent HSBC and York that she took the ₱2,500,000.00 of York and invested the same with Shell Corporation. Petitioner Bernyl similarly denied 1) having met with Dy, Iñigo, Cortes and Arcuri; and 2) having admitted to them that York knew about petitioner Katherene's move of investing the former's money with Shell Corporation.

Respecting the ₱12,500.00 and ₱8,333.33 regular monthly deposits to York's account made using the code "CEO8," petitioners Bernyl and Katherene, in their defense, argued that since it was a deposit, it was her duty to accept the funds for deposit. As regards York's time deposit with respondent HSBC, petitioners Bernyl and Katherene insisted that the funds therein were never entrusted to Katherene in the latter's capacity as PCSR Employee of the former because monies deposited "at any bank would not and will not be entrusted to specific bank employee but to the bank as a whole."

Following the requisite preliminary investigation, Assistant City Prosecutor (ACP) Victor C. Laborte, Prosecutor II of the OCP, Cebu City, in a *Resolution*[8] dated 21 February 2003,

[8] *Id.* at 68-72.

found no probable cause to hold petitioners Bernyl and Katherene liable to stand trial for the criminal complaint of estafa and/or qualified estafa, particularly Article 315 of the Revised Penal Code. Accordingly, the ACP recommended the dismissal of respondent HSBC's complaint.

The ACP explained his finding, *viz*:

> As in any other cases, we may never know the ultimate truth of this controversy. But on balance, the evidence on record tend to be supportive of respondents' contention rather than that of complaint.
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> First of all, it is well to dwell on what Mr. York said in his affidavit. Thus:
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> > '18. For purposes of opening these two time deposits (sic) accounts, Ms. Balangauan asked me to sign several Bank documents on several occasions, the nature of which I was unfamiliar with.'
> >
> > '20. I discovered later that these were withdrawal slips and cash movement tickets, with which documents Ms. Balangauan apparently was able to withdraw the amount from my accounts, and take the same from the premises of the Bank.'
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> In determining the credibility of an evidence, it is well to consider the probability or improbability of one's statements for it has been said that there is no test of the truth of human testimony except its conformity to our knowledge, observation and experience.
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> Mr. York could not have been that unwary and unknowingly innocent to claim unfamiliarity with withdrawal slips and cash movement tickets which Ms. Balangauan made him to sign on several occasions. He is a premier client of HSBC maintaining an account in millions of pesos. A withdrawal slip and cash movement tickets could not have had such intricate wordings or terminology so as to render them non-understandable even to an ordinary account holder. Mr. York admittedly is a long-standing client of the bank. Within the period of 'long-standing' he certainly must have effected some withdrawals. It goes without saying therefore that the occasions that Ms. Balangauan caused him to sign withdrawal slips are not his first encounter with such kinds of documents.

The one ineluctable conclusion therefore that can be drawn from the premises is that Mr. York freely and knowingly knew what was going on with his money, who has in possession of them and where it was invested. These take out the elements of deceit, fraud, abuse of confidence and without the owner's consent in the crimes charged.

The other leg on which complainant's cause of action stands rest on its claim for sum of money against respondents allegedly after it reimbursed Mr. York for his missing account supposedly taken/ withdrawn by Ms. Balangauan. The bank's action against respondents would be a civil suit against them which apparently it already did after the bank steps into the shoes of Mr. York and becomes the creditor of Ms. Balangauan.[9]

The ACP then concluded that:

By and large, the evidence on record do (sic) not engender enough bases to establish a probable cause against respondents.[10]

On 1 July 2003, respondent HSBC appealed the above-quoted resolution and foregoing comment to the Secretary of the DOJ by means of a Petition for Review.

In a Resolution dated 6 April 2004, the Chief State Prosecutor, Jovencito R. Zuño, for the Secretary of the DOJ, dismissed the petition. In denying respondent HSBC's recourse, the Chief State Prosecutor held that:

Sec. 12 (c) of Department Circular No. 70 dated July 2, 2000 provides that the Secretary of Justice may, *motu proprio*, dismiss outright the petition if there is no showing of any reversible error in the questioned resolution.

We carefully examined the petition and its attachments and found no reversible error that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter.

Respondent HSBC's *Motion for Reconsideration* was likewise denied with finality by the DOJ in a lengthier Resolution dated 30 August 2004.

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[9] *Id.* at 70-71.

[10] *Id.* at 72.

The DOJ justified its ruling in this wise:

A perusal of the motion reveals no new matter or argument which was not taken into consideration in our review of the case. Hence, we find no cogent reason to reconsider our resolution. Appellant failed to present any iota of evidence directly showing that respondent Katherene Balangauan took the money and invested it somewhere else. All it tried to establish was that Katherene unlawfully took the money and fraudulently invested it somewhere else x x x, because after the withdrawals were made, the money never reached Roger York as appellant adopted hook, line and sinker the latter's declaration, despite York's signatures on the withdrawal slips covering the total amount of ₱2,500,000.00 x x x. While appellant has every reason to suspect Katherene for the loss of the ₱2,500,000.00 as per York's bank statements, the cash deposits were identified by the numerals "CEO8" and it was only Katherene who could transact from the computer in the work station CEO-8, plus alleged photographs showing Katherene "leaving her office at 5:28 p.m. with a bulky plastic bag presumably containing cash" since a portion of the funds was withdrawn, we do not, however, dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence.

Moreover, an examination of the petition for review reveals that appellant failed to append thereto all annexes to respondents' urgent manifestations x x x together with supplemental affidavits of Melanie de Ocampo and Rex B. Balucan x x x, which are pertinent documents required under Section 5 of Department Circular No. 70 dated July 3, 2000.[11]

Respondent HSBC then went to the Court of Appeals by means of a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court.

On 28 April 2006, the Court of Appeals promulgated its Decision granting respondent HSBC's petition, thereby annulling and setting aside the twin resolutions of the DOJ.

The *fallo* of the assailed decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case.

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[11] *Id.* at 125-126.

The assailed Resolutions dated April 6, 2004 and August 30, 2004 are ANNULLED and SET ASIDE.

The City Prosecutor of Cebu City is hereby ORDERED to file the appropriate Information against the private respondents.[12]

Petitioners Bernyl and Katherene's motion for reconsideration proved futile, as it was denied by the appellate court in a *Resolution* dated 29 June 2006.

Hence, this petition for *certiorari* filed under Rule 65 of the Revised Rules of Court.

Petitioners Bernyl and Katherene filed the present petition on the argument that the Court of Appeals committed grave abuse of discretion in reversing and setting aside the resolutions of the DOJ *when*: (1) "[i]t reversed the resolution of the Secretary of Justice, Manila dated August 30, 2004 and correspondingly, gave due course to the Petition for *Certiorari* filed by HSBC on April 28, 2006 despite want of probable cause to warrant the filing of an information against the herein petitioners"[13]; (2) "[i]t appreciated the dubious evidence adduced by HSBC albeit the absence of legal standing or personality of the latter"[14]; (3) "[i]t denied the motions for reconsideration on June 29, 2006 notwithstanding the glaring evidence proving the innocence of the petitioners"[15]; (4) "[i]t rebuffed the evidence of the herein petitioners in spite of the fact that, examining such evidence alone would establish that the money in question was already withdrawn by Mr. Roger Dwayne York"[16]; and (5) "[i]t failed to dismiss outright the petition by HSBC considering that the required affidavit of service was not made part or attached in the said petition pursuant to Section 13, Rule 13 in relation to

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[12] *Id.* at 204.

[13] *Id.* at 16.

[14] *Id.*

[15] *Id.*

[16] *Id.*

Section 3, Rule 46, and Section 2, Rule 56 of the Rules of Court."[17]

Required to comment on the petition, respondent HSBC remarked that the filing of the present petition is improper and should be dismissed. It argued that the correct remedy is an appeal by *certiorari* under Rule 45 of the Revised Rules of Court.

Petitioners Bernyl and Katherene, on the other hand, asserted in their *Reply*[18] that the petition filed under Rule 65 was rightfully filed considering that not only questions of law were raised but questions of fact and error of jurisdiction as well. They insist that the Court of Appeals "clearly usurped into the jurisdiction and authority of the Public Prosecutor/Secretary of justice (sic) x x x."[19]

Given the foregoing arguments, there is need to address, first, the issue of the mode of appeal resorted to by petitioners Bernyl and Katherene. The present petition is one for *certiorari* under Rule 65 of the Revised Rules of Court. Notice that what is being assailed in this recourse is the decision and resolution of the Court of Appeals dated 28 April 2006 and 29 June 2006, respectively. The Revised Rules of Court, particularly Rule 45 thereof, specifically provides that an appeal by *certiorari* from the judgments or final orders or resolutions of the appellate court is by verified petition for review on *certiorari*.[20]

In the present case, there is no question that the 28 April 2006 *Decision* and 29 June 2006 *Resolution* of the Court of Appeals granting the respondent HSBC's petition in CA-G.R. CEB. SP No. 00068 is already a disposition on the merits. Therefore, both decision and resolution, issued by the Court of Appeals, are in the nature of a final disposition of the case set

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[17] *Id.*

[18] *Id.* at 226.

[19] *Id.* at 227.

[20] Section 1, Rule 45, Revised Rules of Court.

before it, and which, under Rule 45, are appealable to this Court *via* a Petition for Review on *Certiorari*, *viz*:

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

It is elementary in remedial law that a writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency.[21] In this case, appeal was not only available but also a speedy and adequate remedy.[22] And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice,[23] this Court has, before,[24] treated a petition for *certiorari* as a petition for review on *certiorari*, particularly if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*;[25] this exception is not applicable to the present factual milieu.

Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court:

SEC. 2. *Time for filing; extension.* – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or

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[21] *Chua v. Santos*, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.

[22] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 372 (1999).

[23] *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003).

[24] *Id.*

[25] *Republic v. Court of Appeals*, 379 Phil. 92, 98 (2000); *Eternal Gardens Memorial Park Corp. v. Court of Appeals*, 347 Phil. 232, 256 (1997).

resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

a party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from receipt of the judgment, final order or resolution sought to be appealed. In this case, petitioners Bernyl and Katherene's motion for reconsideration of the appellate court's Resolution was denied by the Court of Appeals in its *Resolution* dated 29 June 2006, a copy of which was received by petitioners on 4 July 2006. The present petition was filed on 1 September 2006; thus, at the time of the filing of said petition, 59 days had elapsed, way beyond the 15-day period within which to file a petition for review under Rule 45, and even beyond an extended period of 30 days, the maximum period for extension allowed by the rules had petitioners sought to move for such extra time. As the facts stand, petitioners Bernyl and Katherene had lost the right to appeal *via* Rule 45.

Be that as it may, alternatively, if the decision of the appellate court is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, then such ruling is fatally defective on jurisdictional ground and may be questioned even after the lapse of the period of appeal under Rule 45[26] but still within the period for filing a petition for *certiorari* under Rule 65.

We have previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates and contravenes the Constitution, the law or existing jurisprudence. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[27] The word "capricious," usually used in tandem with

[26] *People v. Romualdez*, G.R. No. 166510, 15 July 2008.

[27] *Banal III v. Panganiban*, G.R. No. 167474, 15 November 2005, 475 SCRA 164, 174.

the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[28]

In reversing and setting aside the resolutions of the DOJ, petitioners Bernyl and Katherene contend that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court of Appeals, when it resolved to grant the petition in CA-G.R. CEB. SP No. 00068, did so on two grounds, *i.e.*, 1) that "the public respondent (DOJ) gravely abused his discretion in finding that there was no reversible error on the part of the Cebu City Prosecutor dismissing the case against the private respondent without stating the facts and the law upon which this conclusion was made"[29]; and 2) that "the public respondent (DOJ) made reference to the facts and circumstances of the case leading to his finding that no probable cause exists, x x x (the) very facts and circumstances (which) show that there exists a probable cause to believe that indeed the private respondents committed the crimes x x x charged against them."[30]

It explained that:

> In refusing to file the appropriate information against the private respondents because he 'does not dwell on possibilities, suspicion and speculation' and that he rules 'based on hard facts and solid evidence', (sic) the public respondent exceeded his authority and gravely abused his discretion. It must be remembered that a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. The term does not mean 'actual or positive cause;' (sic) nor does it import absolute certainty. It is merely based on

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[28] *Olanolan v. Commission on Elections*, G.R. No. 165491, 31 March 2005, 454 SCRA 807, 814.

[29] CA decision, p. 3; *rollo*, p. 201.

[30] *Id.* at 202.

opinion and reasonable belief. [Citation omitted.] A trial is there precisely for the reception of evidence of the prosecution in support of the charge.

In this case, the petitioner had amply established that it has a *prima facie* case against the private respondents. As observed by the public respondent in his second assailed resolution, petitioner was able to present photographs of private respondent Ms. Balangauan leaving her office carrying a bulky plastic bag. There was also the fact that the transactions in Mr. York's account used the code 'CEO8' which presumably point to the private respondent Ms. Balangauan as the author thereof for she is the one assigned to such work station.

Furthermore, petitioner was able to establish that it was Ms. Balangauan who handled Mr. York's account and she was the one authorized to make the placement of the sum of ₱2,500,000.00. Since said sum is nowhere to be found in the records of the bank, then, apparently, Ms. Balangauan must be made to account for the same.[31]

The appellate court then concluded that:

These facts engender a well-founded belief that that (sic) a crime has been committed and that the private respondents are probably guilty thereof. In refusing to file the corresponding information against the private respondents despite the presence of the circumstances making out a *prima facie* case against them, the public respondent gravely abused his discretion amounting to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[32]

The Court of Appeals found fault in the DOJ's failure to identify and discuss the issues raised by the respondent HSBC in its Petition for Review filed therewith. And, in support thereof, respondent HSBC maintains that it is incorrect to argue that "it was not necessary for the Secretary of Justice to have his resolution recite the facts and the law on which it was based," because courts and quasi-judicial bodies should faithfully comply with Section 14, Article VIII of the Constitution requiring that

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[31] *Id.* at 203.

[32] *Id.*

decisions rendered by them should state clearly and distinctly the facts of the case and the law on which the decision is based.[33]

Petitioners Bernyl and Katherene, joined by the Office of the Solicitor General, on the other hand, defends the DOJ and assert that the questioned resolution was complete in that it stated the legal basis for denying respondent HSBC's petition for review – "that (after) an examination (of) the petition and its attachment [it] found no reversible error that would justify a reversal of the assailed resolution which is in accord with the law and evidence on the matter."

It must be remembered that a preliminary investigation is not a quasi-judicial proceeding, and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. In *Bautista v. Court of Appeals*,[34] this Court held that a preliminary investigation is not a quasi-judicial proceeding, thus:

> [T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

Though some cases[35] describe the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature,

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[33] *Id.* at 160-161.

[34] *Bautista v. Court of Appeals,* 413 Phil. 159, 168-169 (2001).

[35] *Cojuangco, Jr. v. Presidential Commission on Good Government,* G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226, 244; *Crespo v. Mogul,*

this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point.[36] A quasi-judicial body is an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making.[37] A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an Information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the former's order or resolutions. In this case, since the DOJ is not a quasi-judicial body, Section 14, Article VIII of the Constitution finds no application. Be that as it may, the DOJ rectified the shortness of its first resolution by issuing a lengthier one when it resolved respondent HSBC's motion for reconsideration.

Anent the substantial merit of the case, whether or not the Court of Appeals' decision and resolution are tainted with grave abuse of discretion in finding probable cause, this Court finds the petition dismissible.

The Court of Appeals cannot be said to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside the resolutions of the DOJ. In the resolutions of the DOJ, it affirmed the recommendation of ACP Laborte that no probable cause existed to warrant the filing in court of an Information for estafa and/or qualified estafa against petitioners Bernyl and Katherene. It was the reasoning of the DOJ that "[w]hile appellant has every reason to suspect Katherene for the loss of the ₱2,500,000.00 as per York's bank statements, the cash deposits

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G.R. No. 53373, 30 June 1987, 151 SCRA 462, 469-470; *Andaya v. Provincial Fiscal of Surigao del Norte,* 165 Phil. 134, 139 (1976).

[36] *Bautista v. Court of Appeals, supra* note 34 at 167.

[37] *Id.* at 168.

were identified by the numerals 'CEO8' and it was only Katherene who could transact from the computer in the work station CEO-8, plus alleged photographs showing Katherene 'leaving her office at 5:28 p.m. with a bulky plastic bag presumably containing cash' since a portion of the funds was withdrawn, we do not, however, dwell on possibilities, suspicion and speculation. We rule based on hard facts and solid evidence."[38]

We do not agree.

Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[39] A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[40]

The executive department of the government is accountable for the prosecution of crimes, its principal obligation being the faithful execution of the laws of the land. A necessary component of the power to execute the laws is the right to prosecute their violators,[41] the responsibility for which is thrust upon the DOJ. Hence, the determination of whether or not probable cause exists to warrant the prosecution in court of an accused is consigned and entrusted to the DOJ. And by the nature of his office, a public prosecutor is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion.

But this is not to discount the possibility of the commission of abuses on the part of the prosecutor. It is entirely possible that the investigating prosecutor has erroneously exercised the

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[38] *Rollo,* pp. 125-126.

[39] *R.R. Paredes v. Calilung,* G.R. No. 156055, 5 March 2007, 517 SCRA 369, 394.

[40] *Webb v. Hon. De Leon,* 317 Phil. 758, 789 (1995).

[41] *R.R. Paredes v. Calilung, supra* note 39 at 394-395.

discretion lodged in him by law. This, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.[42]

And while it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause,[43] we have nonetheless made some exceptions to the general rule, such as when the acts of the officer are without or in excess of authority,[44] resulting from a grave abuse of discretion. Although there is no general formula or fixed rule for the determination of probable cause, since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge (public prosecutor) or run counter to the clear dictates of reason.[45]

Applying the foregoing disquisition to the present petition, the reasons of DOJ for affirming the dismissal of the criminal complaints for estafa and/or qualified estafa are determinative of whether or not it committed grave abuse of discretion amounting to lack or excess of jurisdiction. In requiring "*hard facts and solid evidence*" as the basis for a finding of probable cause to hold petitioners Bernyl and Katherene liable to stand trial for the crime complained of, the DOJ disregards the definition of probable cause – that it is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong

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[42] *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1185 (1996).

[43] *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101, 113 (2002), citing *Sebastian, Sr. v. Garchitorena*, 397 Phil. 519, 525 (2000).

[44] *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470.

[45] *Sales v. Sandiganbayan*, 421 Phil. 176, 192-193 (2001).

suspicion, that a thing is so.[46] The term does not mean "actual and positive cause" nor does it import absolute certainty.[47] It is merely based on opinion and reasonable belief;[48] that is, the belief that the act or omission complained of constitutes the offense charged. While probable cause demands more than "bare suspicion," it requires "less than evidence which would justify conviction." Herein, the DOJ reasoned as if no evidence was actually presented by respondent HSBC when in fact the records of the case were teeming; or it discounted the value of such substantiation when in fact the evidence presented was adequate to excite in a reasonable mind the probability that petitioners Bernyl and Katherene committed the crime/s complained of. In so doing, the DOJ whimsically and capriciously exercised its discretion, amounting to grave abuse of discretion, which rendered its resolutions amenable to correction and annulment by the extraordinary remedy of *certiorari*.

From the records of the case, it is clear that a *prima facie* case for estafa/qualified estafa exists against petitioners Bernyl and Katherene. A perusal of the records, *i.e.*, the affidavits of respondent HSBC's witnesses, the documentary evidence presented, as well as the analysis of the factual milieu of the case, leads this Court to agree with the Court of Appeals that, taken together, they are enough to excite the belief, in a reasonable mind, that the Spouses Bernyl Balangauan and Katherene Balangauan are guilty of the crime complained of. Whether or not they will be convicted by a trial court based on the same evidence is not a consideration. It is enough that acts or omissions complained of by respondent HSBC constitute the crime of estafa and/or qualified estafa.

Collectively, the photographs of petitioner Katherene leaving the premises of respondent HSBC carrying a bulky plastic bag and the affidavits of respondent HSBC's witnesses sufficiently

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[46] *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[47] *R.R. Paredes v. Calilung, supra* note 39 at 394.

[48] *Id.*

establish acts adequate to constitute the crime of estafa and/or qualified estafa. What the affidavits bear out are the following: that York was a Premier Client of respondent HSBC; that petitioner Katherene handled all the accounts of York; that not one of York's accounts reflect the ₱2,500,000.00 allegedly deposited in a higher yielding account; that prior to the discovery of her alleged acts and omissions, petitioner Katherene supposedly persuaded York to invest in a "new product" of respondent HSBC, *i.e.*, a higher interest yielding time deposit; that York made a total of ₱2,500,000.00 investment in the "new product" by authorizing petitioner Balangauan to transfer said funds to it; that petitioner Katherene supposedly asked York to sign several transaction documents in order to transfer the funds to the "new product"; that said documents turned out to be withdrawal slips and cash movement tickets; that at no time did York receive the cash as a result of signing the documents that turned out to be withdrawal slips/cash movement tickets; that York's account was regularly credited "loose change" in the amounts of ₱12,500.00 and ₱8,333.33 beginning in the month after the alleged "transfer" of York's funds to the "new product"; that the regular deposits of loose change were transacted with the use of petitioner Katherene's work terminal accessed by her password "CEO8"; that the "CEO8" password was keyed in with the use of a swipe card always in the possession of petitioner Katherene; that one of the loose-change deposits was transacted *via* the phone banking feature of respondent HSBC and that when traced, the phone number used was the landline number of the house of petitioners Bernyl and Katherene; that respondent HSBC's bank personnel, as well as York, supposedly a) talked with petitioner Katherene on the phone, and that she allegedly admitted that the missing funds were invested with Shell Company, of which York approved, and that it was only for one year; and b) met with petitioner Bernyl, and that the latter at first denied having knowledge of his wife's complicity, but later on admitted that he knew of the investment with Shell Company, and that he supposedly made the loose-change deposit *via* phone banking; that after 23 April 2002, York was told that respondent HSBC had no "new product"

or that it was promoting investment with Shell Company; that York denied having any knowledge that his money was invested outside of respondent HSBC; and that petitioner Katherene would not have been able to facilitate the alleged acts or omissions without taking advantage of her position or office, as a consequence of which, HSBC had to reimburse York the missing ₱2,500,000.00.

From the above, the alleged circumstances of the case at bar make up the elements of abuse of confidence, deceit or fraudulent means, and damage under Art. 315 of the Revised Penal Code on estafa and/or qualified estafa. They give rise to the presumption or reasonable belief that the offense of estafa has been committed; and, thus, the filing of an Information against petitioners Bernyl and Katherene is warranted. That respondent HSBC is supposed to have no personality to file any criminal complaint against petitioners Bernyl and Katherene does not *ipso facto* clear them of *prima facie* guilt. The same goes for their basic denial of the acts or omissions complained of; or their attempt at shifting the doubt to the person of York; and their claim that witnesses of respondent HSBC are guilty of fabricating the whole scenario. These are matters of defense; their validity needs to be tested in the crucible of a full-blown trial. Lest it be forgotten, the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can best be passed upon after a full-blown trial on the merits. Litigation will prove petitioners Bernyl and Katherene's innocence if their defense be true.

In fine, the relaxation of procedural rules may be allowed only when there are exceptional circumstances to justify the same. Try as we might, this Court cannot find grave abuse of discretion on the part of the Court of Appeals, when it reversed and set aside the resolutions of the DOJ. There is no showing that the appellate court acted in an arbitrary and despotic manner, so patent or gross as to amount to an evasion or unilateral refusal to perform its legally mandated duty. On the contrary, we find the assailed decision and resolution of the Court of Appeals to be more in accordance with the evidence on record

and relevant laws and jurisprudence than the resolutions of the DOJ.

Considering the allegations, issues and arguments adduced and our disquisition above, we hereby dismiss the instant petition for being the wrong remedy under the Revised Rules of Court, as well as for petitioner Bernyl and Katherene's failure to sufficiently show that the challenged *Decision* and *Resolution* of the Court of Appeals were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is *DISMISSED* for lack of merit. The 28 April 2006 *Decision* and the 29 June 2006 *Resolution* of the Court of Appeals in CA-G.R. CEB- SP No. 00068, are hereby *AFFIRMED.* With costs against petitioners — Spouses Bernyl Balangauan and Katherene Balangauan.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174918. August 13, 2008]

BONAVENTURE MINING CORPORATION, *petitioner, vs.* **V.I.L. MINES, INCORPORATED, represented by its Corporate Secretary, ROXANNA S. GO,** *respondent.*

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[*] Designated as an additional member in place of Justice Antonio Eduardo B. Nachura who was then the Solicitor General.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; WHEN A PARTY IS REPRESENTED BY COUNSEL OF RECORD, SERVICE OF ORDERS AND NOTICES MUST BE MADE UPON SAID ATTORNEY.— Well-settled is the rule that when a party is represented by counsel of record, service of orders and notices must be made upon said attorney. Accordingly, it is the date of service on counsel of record of the notice of judgment which is considered the starting point from which the period of appeal prescribed by law shall begin to run.

2. ID.; ID.; CLIENTS ARE BOUND BY THE ACTIONS OF THEIR COUNSEL IN THE CONDUCT OF THEIR CASE.— The rule is that clients are bound by the actions of their counsel in the conduct of their case. If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; DEPARTMENT MEMORANDUM ORDER NO. 97-07; EXPLAINED.— Section 12 of DMO 97-07 reads: "SECTION. 12. Divestment/Relinquishment of Areas in Excess of Maximum FTAA Contract Area. — All FTAA applications filed prior to the effectivity of the Act which exceed the maximum contract area as set forth in Section 34 of the Act and Section 51 of the IRR **must conform to said maximum on or before September 15, 1997.** For this purpose, all applicants who have not otherwise relinquished or divested any areas held in excess of the allowable maximum by September 15, 1997 **must relinquish/divest said areas on such date** in favor of the Government by filing a Declaration of Areas Relinquished/ Divested, containing the technical description of such area/s, with the Bureau/concerned Regional Office. The concerned applications shall be accordingly amended and areas relinquished/divested shall be open for Mining Applications. x x x Failure to relinquish/divest areas in excess of the maximum contract area as provided for in this section **will result in the**

denial or cancellation of the FTAA application after which, the areas covered thereby shall be open for Mining Applications." x x x Section 12 of DMO 97-07 provides for the effect of failing to relinquish excess areas within the deadline, that it "will result in the denial or cancellation of the FTAA application. . ." No further executive action is necessary since DMO 97-07 itself already provided for the sanction of failing to meet the deadline. Any executive action beyond the deadline would be a mere superfluity. Section 12 of DMO 97-07 must be read in conjunction with Section 14 which states that the deadlines therein are not subject to extension, *viz*: "SECTION. 14. No Extension of Periods. — The deadline set at September 15, 1997 pursuant to Section 4 hereof and all other periods prescribed herein **shall not be subject to extension.**" DMO 97-07 was promulgated precisely to set a specific date for all FTAA applicants within which to relinquish all areas in excess of the maximum prescribed by law. Accordingly, the deadline cannot be extended or changed except by amending DMO 97-07.

APPEARANCES OF COUNSEL

Fernando S. Peñarroyo for petitioner.

De Los Angeles Aguirre Olaguer Salomon & Fabro for respondent.

D E C I S I O N

PUNO, *C.J.*:

Before us is a Petition for Review under Rule 45 of the Rules of Court filed by the petitioner Bonaventure Mining Corporation (BMC), to set aside the Decision[1] of the Court of Appeals dated August 29, 2006 (CA Decision) which reversed the Decision[2] of the Mines Adjudication Board (MAB) and reinstated the Decision[3] of the Panel of Arbitrators upholding

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[1] *Rollo*, pp. 52-70; penned by Justice Jose Catral Mendoza, concurred in by Justices Elvi John S. Asuncion and Sesinando E. Villon.

[2] *Id.* at 91-105; dated August 24, 2004.

[3] *Id.* at 76-89; dated March 22, 2002.

the EPA-IVA-63 of respondent V.I.L. Mines, Incorporated (VMI), and canceling the EPA-IVA-72 of petitioner BMC.

This case involves a conflict over mining claims between BMC and VMI over a mountainous section that transcends the common boundaries of the provinces of Quezon and Camarines Norte, specifically within the municipal jurisdictions of Tagkawayan and Guinigayangan in Quezon, and Labo and Sta. Elena in Camarines Norte.[4]

The facts are of record.

On February 20, 1995, Tapian Mining Corporation (now Greenwater Mining Corporation [Greenwater]) filed an application for a Financial and Technical Assistance Agreement (FTAA) with the Central Office of the Mines and Geosciences Bureau (MGB) covering approximately 100,000 hectares in Tagkawayan, Quezon as well as in the provinces of Camarines Norte and Camarines Sur. Before that time, Greenwater had already filed other FTAA applications, specifically in Marinduque, covering 73,000 hectares, and in the Bulacan, Quezon and Rizal provinces totaling another 100,000 hectares.[5]

On March 3, 1995, Republic Act No. 7942 (R.A. No. 7942), otherwise known as "The Philippine Mining Act of 1995," was passed by Congress. It provided for the maximum allowable area that may be granted a qualified person under a FTAA, *viz*:

> SECTION 34. Maximum Contract Area. — The maximum contract area that may be granted per qualified person, subject to relinquishment shall be:
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> (a) 1,000 meridional blocks onshore;
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> (b) 4,000 meridional blocks offshore; or
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> (c) Combinations of (a) and (b) provided that it shall not exceed the maximum limits for onshore and offshore areas.

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[4] *Id.* at 6.

[5] *Id.* at 436.

On March 12, 1996, the Department of Environment and Natural Resources (DENR) issued the implementing rules and regulations (IRR) of R.A. No. 7942 in the form of Department Administrative Order No. (DAO) 95-23. It gave FTAA applicants a deadline of one (1) year from its date of effectivity within which to divest or relinquish from their applications areas exceeding the maximum provided by R.A. No. 7942. Section 257 of DAO 95-23 provides:

Section 257. Non-impairment of Existing Mining/Quarrying Rights. —

x x x x x x x x x

All pending applications for MPSA/FTAA and exploration permits issued prior to the promulgation of these implementing rules and regulations shall be governed by the provisions of the Act and these implementing rules and regulations; Provided, however, that where the grant of such FTAA application/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, **the applicant/proponent shall have one year, from the effectivity of these implementing rules and regulations, to divest or relinquish applications or portions thereof which, if granted, would exceed the maximum contract area allowance provided under the Act**; Provided, finally, that this provision is applicable only to all FTAA applications filed under DAO 63 prior to the approval of the Act. (Emphasis supplied)

x x x x x x x x x

On August 27, 1996, Section 257 of DAO 95-23 was amended by DAO 96-25 giving FTAA applicants an extension of one (1) year within which to divest or relinquish excess areas from their applications, *viz*:

Section 257. Non-Impairment of Existing Mining/Quarrying Rights.—

x x x x x x x x x

All pending applications for MPSA/FTAA covering forest land and other government reservations shall not be required to re-apply for exploration permit **provided, that where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, the applicant/proponent**

shall be given an extension of one year, reckoned from September 13, 1996, to divest or relinquish in favor of government, areas in excess of the maximum area allowance provided under the Act. (Emphasis supplied)

On December 19, 1996, DAO 96-40, the revised IRR of R.A. No. 7942, was issued. Among other provisions, DAO 96-40 reiterated the deadline of one (1) year from September 13, 1996, or until September 13, 1997, within which FTAA applicants may divest or relinquish certain areas in their applications which exceed the maximum allowable area under R.A. No. 7942. Section 272 of DAO 96-40 provides as follows:

Section 272. Non-Impairment of Existing Mining/Quarrying Rights.—

x x x x x x x x x

All pending applications for MPSA/FTAA covering forest land and Government Reservations shall not be required to re-apply for Exploration Permit: *Provided*, That where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act**, the applicant/proponent shall be given an extension of one (1) year, reckoned from September 13, 1996, to divest or relinquish pursuant to Department Administrative Order No. 96-25 in favor of the Government, areas in excess of the maximum area allowance provided under the Act**. For this purpose, a Special Exploration Permit of limited applications and activities shall be issued by the Secretary upon the recommendation of the Director, subject to the terms and conditions specified in the Permit and pertinent provisions of Chapter V hereof: *Provided*, That an area permission shall be granted likewise by the Secretary to undertake limited exploration activities in non-critical forest reserves and forest reservations and such other areas within the jurisdiction of the Department. In other areas, however, the applicant/proponent shall secure the necessary area clearances or written consent by the concerned agencies or parties, as provided for by law: *Provided, further*, That the time period shall be deducted from the life of the MPSA/FTAA and exploration costs can be included as part of pre-operating expenses for purposes of cost recovery should the FTAA be approved: *Provided, finally*, That this provision is applicable only to all FTAA/MPSA applications filed under Department

Administrative Order No. 63 prior to the effectivity of the Act and these implementing rules and regulations. (Emphasis supplied)

x x x x x x x x x

On August 27, 1997, the DENR issued Department Memorandum Order No. 97-07 (DMO 97-07), entitled "Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes." DMO 97-07 provides, among others, for the following: (1) the deadline for the relinquishment of excess areas shall be on September 15, 1997 (September 13, 1997 falling on a Saturday);[6] (2) all applicants of FTAA applications filed under DAO 57 and DAO 63 with insufficient compliance of the mandatory requirements shall submit, on September 15, 1997, a Status Report indicating the requirements that have not been complied with and a Letter with the undertaking that the said requirements will be completely complied with on or before October 30, 1997;[7] and (3) the deadlines prescribed shall not be subject to extension.[8]

On September 17, 1996, St. Joe Mining Corporation filed an Exploration Permit Application, denominated as EPA-IVA-24, with an area of 11,340 hectares situated in Tagkawayan, Quezon which overlaps the FTAA application of Greenwater.

On September 26, 1997, pursuant to DMO 97-07, Greenwater filed a Letter of Intent[9] dated September 10, 1997 with the MGB stating its intention to retain its first FTAA application in Marinduque and to relinquish the areas in excess of the maximum allowable 81,000 hectares covered by its other FTAA applications including those which cover areas of Quezon Province and Camarines Norte.

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[6] Section 12 of DENR Department Memorandum Order No. (DMO) 97-07, August 27, 1997.

[7] *Id.* at Section 13.

[8] *Id.* at Section 14.

[9] CA *rollo,* p. 43.

On October 22, 1997, OIC-Regional Director Reynulfo Juan sent a letter[10] to Greenwater stating that the latter has fifteen (15) days from receipt of the letter to submit the technical descriptions of the areas Greenwater intends to relinquish with a warning that failure to do so would cause the denial of the FTAA application in those areas.

On November 10, 1997, VMI filed an Exploration Permit Application,[11] denominated as EPA-IVA-63, with an area of 11,826 hectares. VMI's application covers areas included in Greenwater's FTAA application in Quezon Province and Camarines Norte.

On December 8, 1997, MGB Region IV rejected EPA-IVA-24 of St. Joe Mining Corporation on the ground that it was filed at the time that Greenwater's FTAA application was still valid and existing.

On February 23, 1998, OIC-Regional Director Reynulfo Juan sent another letter[12] to Greenwater stating that due to failure to comply with the directives in the letter dated October 22, 1997, Greenwater's FTAA applications "are deemed to have been relinquished as provided for under DENR Memorandum Order No. 97-07."

On May 4, 1999, BMC filed an Exploration Permit Application,[13] denominated as EPA-IVA-72, with an area of 9,794 hectares which almost completely overlaps the area covered by VMI's application.

On October 4, 1999, VMI filed a petition for the cancellation of BMC's exploration permit application claiming that it overlaps with its prior and existing application. The petition was later amended on February 28, 2000, to include the cancellation and confirmation of the nullity of St. Joe Mining Corporation's EPA-IVA-24.

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[10] *Id.* at 44.

[11] *Id.* at 45.

[12] *Id.* at 47.

[13] *Id.* at 48-49.

On March 22, 2002, the Panel of Arbitrators rendered its Decision[14] upholding the validity of VMI's exploration permit application and declaring BMC's and St. Joe Mining Corporation's applications as null and void.

On July 5, 2002, BMC filed a Notice of Appeal and Memorandum of Appeal with the MAB. On August 24, 2004, the MAB rendered its Decision,[15] modifying the decision of the Panel of Arbitrators. The MAB gave due course to BMC's application for an exploration permit but allowed VMI's application to proceed, sans the areas covered by BMC's application.

From this decision, VMI filed its Petition for Review with the Court of Appeals. The Court of Appeals reversed and set aside the decision of the MAB and reinstated the decision of the Panel of Arbitrators.

Hence, BMC now comes to this Court raising the following issues:

A.

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT FAILURE TO COMPLY WITH *DENR MEMORANDUM ORDER NO. 97-07* ON RETENTION REQUIREMENTS WOULD CAUSE THE CANCELLATION OF THE FTAA APPLICATION BY OPERATION OF LAW.

B.

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT THE DISPUTED AREA IS OPEN FOR MINING APPLICATIONS AFTER 30 OCTOBER 1997 AND CONSEQUENTLY UPHOLDING THE MINING APPLICATION OF RESPONDENT AND CANCELING PETITIONER'S.[16]

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[14] *Rollo*, pp. 76-89.

[15] *Id.* at 91-105.

[16] *Id.* at 16. (Boldfaced in the original)

VMI, however, questions the timeliness of the filing of the petition. Hence, before we can consider the merits of the case, it is imperative that the Court address this issue in view of the procedural stricture that the timely perfection of an appeal is both a mandatory and jurisdictional requirement.

In its Comment, VMI contends that BMC received a copy of the CA Decision on September 5, 2006 and not on October 9, 2006 as alleged by BMC.[17] To support its claim, VMI presented a Certification[18] from the Makati Central Post Office dated October 5, 2005 stating that a copy of the CA Decision was served by Letter Carrier Larry Lopez to BMC's counsel on September 5, 2006 but the same was returned by the Letter Carrier to the sender, the Court of Appeals, for the reason that counsel for BMC had allegedly "MOVED OUT" of his address of record. Thus, the filing of the Petition only on October 23, 2006 is out of time.

In its Reply, BMC alleges that the office address of its counsel, Atty. Fernando Peñarroyo (Atty. Peñarroyo), is and has always been at **Unit 201** Orient Mansions, Tordecillas St., Salcedo Village, Makati City and at no time has Atty. Peñarroyo ever transferred or moved out of the said address.[19] BMC and Atty. Peñarroyo further contend that they are perplexed on how the alleged Letter Carrier from the Makati Central Post Office could have delivered a copy of the CA Decision on September 5, 2006 and be informed that Atty. Peñarroyo had moved out.[20] To prove the said allegations, BMC presented the following: 1) affidavit[21] of Ms. Eloisa M. Josef, Building Administrator of Orient Mansions; 2) pertinent portion of the security logbook[22]

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[17] *Id.* at 110.

[18] *Id.* at 222.

[19] *Id.* at 244-245.

[20] *Id.* at 245.

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

[22] *Id.* at 255-266.

of Orient Mansions; and 3) affidavit[23] of Mr. Jeffrey A. Dalisay, the guard on duty on September 5, 2006.

According to VMI, the CA Decision which was received on October 9, 2006 was the copy sent to BMC, whose address is at **Unit 201** Orient Mansions, Tordecillas St., Salcedo Village, Makati City. Atty. Peñarroyo's office address is, however, at **L/2** Orient Mansions, Tordecillas St., Salcedo Village, Makati City, which is the same address used by the Court of Appeals when it mailed the CA Decision to him and the same address stated in the Makati Central Post Office Certification.[24]

BMC counters, however, that the fact that the copy of the CA Decision received on October 9, 2006 was addressed to BMC and not to Atty. Peñarroyo is of no significance since they actually share the same office address.[25]

We hold that the petition was filed out of time.

Well-settled is the rule that when a party is represented by counsel of record, service of orders and notices must be made upon said attorney.[26] Accordingly, it is the date of service on counsel of record of the notice of judgment which is considered the starting point from which the period of appeal prescribed by law shall begin to run.[27]

The records of this case clearly show that Atty. Peñarroyo's address of record used in the proceedings below is L/2 and not Unit 201 at the Orient Mansions.

In the proceedings before the Panel of Arbitrators, the Resolution[28] denying BMC's Motion for Reconsideration, from

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[23] *Id.* at 267-268.

[24] *Id.* at 450.

[25] *Id.* at 246-247.

[26] *Karen and Kristy Fishing Industry v. Court of Appeals*, G.R. Nos. 172760-61, October 15, 2007, 536 SCRA 243, 250.

[27] *Cubar, et al. v. Hon. Mendoza, etc., et al.,* 205 Phil. 672, 676 (1983).

[28] CA *rollo*, pp. 232-240; dated June 11, 2002.

which BMC filed a Notice of Appeal, was furnished to Atty. Peñarroyo at L/2 Orient Mansions.

In the proceedings before the MAB, the Notice of Issuance of An Order[29] informing the parties that a decision has been rendered was likewise furnished to Atty. Peñarroyo at L/2 Orient Mansions.

In the proceedings before the Court of Appeals, the Notice of Resolution[30] informing the parties of the resolution ordering BMC to comment on the petition for review filed by VMI indicates that Atty. Peñarroyo's address is at L/2 Orient Mansions. This was received by him since in compliance he filed a Comment in which he used the same address.[31] Likewise, CA Form No. 1[32] informing the parties of the resolution directing them to file their respective memoranda was sent to him at L/2 Orient Mansions. This was received by him for in compliance he filed a Memorandum in which he used the same address.[33] It was only in the Petition filed before this Court did Atty. Peñarroyo use Unit 201 as his address after VMI had already filed a Manifestation[34] questioning the alleged date of receipt of the CA Decision. In fact, in the Reply, where he alleged that his address of record has always been at Unit 201, he still indicated L/2 as his address below his signature.[35]

Hence, we cannot give credence to Atty. Peñarroyo's claim that his address is and has always been at Unit 201. The fact that both addresses refer to the same building does not obliterate the fact that they are two different addresses. BMC and Atty.

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[29] *Id.* at 319; dated August 30, 2004.

[30] *Id.* at 446; dated August 18, 2005.

[31] *Id.* at 479.

[32] *Id.* at 515; signed by Zamita T. Mationg, Acting Division Clerk of Court of the Special Sixteenth Division of the Court of Appeals.

[33] *Id.* at 609.

[34] *Id.* at 663 to 670; dated October 23, 2006.

[35] *Rollo*, p. 250.

Peñarroyo cannot expect the public to assume that both addresses are one and the same and neither can they be used interchangeably. It was incumbent upon him to inform the Court of Appeals of the change of his address of record from L/2 to Unit 201 at the Orient Mansions. His failure to do so bears consequences which bind BMC.

The rule is that clients are bound by the actions of their counsel in the conduct of their case. If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved.[36]

In brief, the service of the CA Decision on September 5, 2006 at his address of record per the Makati Central Post Office Certification should be the reckoning point from which BMC's period to file the petition begins to run. Thus, the assailed CA Decision became final and executory.

Nevertheless, we have reviewed the records and find that even on its merits the instant petition is destined to fail for reasons we shall discuss briefly.

Section 12 of DMO 97-07 reads:

SECTION 12. Divestment/Relinquishment of Areas in Excess of Maximum FTAA Contract Area

All FTAA applications filed prior to the effectivity of the Act which exceed the maximum contract area as set forth in Section 34 of the Act and Section 51 of the IRR **must conform to said maximum on or before September 15, 1997**. For this purpose, all applicants who have not otherwise relinquished or divested any areas held in excess of the allowable maximum by September 15, 1997 **must relinquish/divest said areas on such date** in favor of the Government by filing a Declaration of Areas Relinquished/Divested, containing the technical description of such area/s, with the Bureau/concerned Regional Office. The concerned applications shall be accordingly amended and areas relinquished/divested shall be open for Mining Applications.

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[36] *Supra* note 26 at 249.

x x x x x x x x x

Failure to relinquish/divest areas in excess of the maximum contract area as provided for in this section **will result in the denial or cancellation of the FTAA application after which, the areas covered thereby shall be open for Mining Applications.** (Emphasis supplied)

BMC contends that based on the foregoing provision, the inability of the FTAA applicant to submit the required documents is only a ground for the MGB or the DENR to cancel or revoke its FTAA application and an executive action is needed before the area becomes open for mining applications.[37] Accordingly, Greenwater's FTAA applications were cancelled and the areas covered thereby became open to mining applications only fifteen days after its receipt of the February 23, 1998 letter of OIC-Regional Director Reynulfo Juan informing it that its FTAA applications have been cancelled.

We find no merit to BMC's contention.

It is undisputed that Greenwater filed its Letter of Intent only on September 26, 1997 or 11 days after the September 15, 1997 mandatory deadline set by Section 12 of DMO 97-07.

Section 12 of DMO 97-07 provides for the effect of failing to relinquish excess areas within the deadline, that it "will result in the denial or cancellation of the FTAA application…." No further executive action is necessary since DMO 97-07 itself already provided for the sanction of failing to meet the deadline. Any executive action beyond the deadline would be a mere superfluity.

Section 12 of DMO 97-07 must be read in conjunction with Section 14 which states that the deadlines therein are not subject to extension, *viz*:

SECTION 14. No Extension of Periods

The deadline set at September 15, 1997 pursuant to Section 4 hereof and all other periods prescribed herein **shall not be subject to extension**. (Emphasis supplied)

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[37] *Rollo*, pp. 326-329.

DMO 97-07 was promulgated precisely to set a specific date for all FTAA applicants within which to relinquish all areas in excess of the maximum prescribed by law. Accordingly, the deadline cannot be extended or changed except by amending DMO 97-07. OIC-Regional Director Reynulfo Juan had no authority to extend the deadline set by DMO 97-07. We agree with the ruling of the Court of Appeals:

> The language of the memorandum order is plain, precise and unequivocal – the period cannot be extended. Beyond that, the pending FTAA applications could no longer be officially acted upon as they were deemed to have expired. **DMO 97-07 *could only be extended by another memorandum order or law* specifically amending the deadline set forth therein. No government officer or employee can do so.**
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> x x x x x x x x x
>
> It is Our considered view that the FTAA application of Greenwater *ipso facto* expired when it did not take any step to comply with the order. **There was no need for any pronouncement or official action. If ever there would be any executive action, it would only be to certify that the application was already cancelled as OIC-Regional Director Reynulfo Juan did when, on January 23, 1998 (sic)**[38]**, it wrote Greenwater that its application over the excess areas was cancelled.** No executive action can stretch the deadline beyond what was stated in the memorandum order, DMO 97-07**.**
>
> **OIC-Regional Director Reynulfo Juan violated DMO 97-07, when in his October 22, 1997 Letter, he gave Greenwater a period *beyond the date of the deadline* within which to submit the technical descriptions of the areas it wanted to relinquish.** By giving Greenwater a period extending beyond October 30, 1997, he was in effect extending the deadline set forth in Section 13 of DMO 97-07. That he could not lawfully do.
>
> **He had no authority extending the deadline because the memorandum order which he was supposed to implement stated that the "period prescribed herein *shall not be subject to extension.*"** Beyond October 30, 1997 all FTAA applications which failed to comply

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[38] Should be February 23, 1998.

with the memorandum order expired and were deemed cancelled by operation of law.[39] (Emphasis supplied)

Finally, even equitable considerations do not favor the petitioner. It is clear from the outset that Greenwater had already lost interest in pursuing its FTAA application. After being given two (2) years to comply with the requirements, Greenwater only filed its Letter of Intent belatedly and did not take any further action nor contested the letter dated February 23, 1998 of OIC-Regional Director Reynulfo Juan informing it that its FTAA applications have been deemed relinquished. It must be emphasized that Greenwater and the public were aware of the deadline and the consequences of failing to meet the same. Accordingly, VMI cannot be faulted for relying on the fact that Greenwater did not comply with the requirements within the deadline set by DMO 97-07 and had already lost interest, for all intents and purposes, in the area it wished to apply for. VMI filed its application on November 10, 1997, or almost 2 years ahead than BMC's application which was filed on May 4, 1999. To rule now that it is BMC's application which should be given due course on an alleged technicality which has no clear basis in law or in the rules will be highly inequitable.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is affirmed. Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[39] *Rollo*, p. 66.

SECOND DIVISION

[G.R. No. 176217. August 13, 2008]

STA. LUCIA REALTY & DEVELOPMENT, INC., *petitioner, vs.* **ROMEO UYECIO, AMARIS UYECIO, REYNALDO UYECIO, and MANUEL UYECIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES, GENERALLY CONSIDERED CONCLUSIVE.— In the absence of substantial showing that the findings of facts of administrative bodies charged with their specific field of expertise were arrived at from an erroneous estimation of the evidence presented, they are considered conclusive, and in the interest of stability of the governmental structure, are not to be disturbed.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; CONTRACT TO SELL, EXPLAINED.— [I]n *Rillo v. Court of Appeals* [the Court] held: "x x x In a contract to sell real property on installments, the **full payment** of the purchase price is a **positive suspensive condition,** the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force. The transfer of ownership and title would occur after full payment of the purchase price. We held in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.* that there can be **no rescission** of an obligation that is still non-existent, the **suspensive condition not having happened.**"

3. ID.; ID.; RESCISSION OF OBLIGATIONS; DOES NOT APPLY TO A CONTRACT TO SELL.— Articles 1191 of the Civil Code does not x x x apply to a contract to sell since there can be no rescission of an obligation that is still non-existent, the suspensive condition not having occurred. In other words, the breach contemplated in Article 1191 is the obligor's failure to comply with an obligation already extant, like a contract of sale,

not a failure of a condition to render binding that obligation. Cancellation, not rescission, of the contract to sell is thus the correct remedy in the premises.

4. ID.; ID.; DAMAGES; INTERESTS; IMPOSITION OF 6% PER ANNUM INTEREST, PROPER WHEN THE AMOUNT TO BE REFUNDED IS NEITHER A LOAN NOR A FORBEARANCE OF MONEY, GOODS OR CREDIT.— On the issue of interest, the imposition of 12% per annum interest on the amount of refund must be reduced to 6%, conformably with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals* and in *Fil-Estate Properties, Inc. v. Go*, the amount to be refunded being neither a loan nor a forbearance of money, goods or credit.

APPEARANCES OF COUNSEL

John Alex A. Villena for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

Sta. Lucia Realty Development, Inc. (petitioner), developer of "The Royale Tagaytay Estates" which is a subdivision project located in Alfonso, Cavite, offered lots for sale payable on installments, proffering that the development of the project would be completed by September 1999. The sales brochures of the project detailed the following improvements and amenities:

1. Church
2. Grand Clubhouse
3. Landscaped gardens and promenade
4. Basketball court
5. Adult pool
6. Kiddie swimming pool
7. Multipurpose hall
8. Function room system
9. Billiards
10. Grand Entrance (Ph. I)
11. Perimeter fence for security and privacy

12. Cemented roads, curbs and gutters
13. Cemented sidewalk
14. Storm drainage system
15. Electrical facilities
16. Mercury street lamps
17. Centralized interrelated water system with deepwell and overhead water tank
18. Concrete electrical posts
19. Tennis court[1]

Respondents Romeo, Amaris, Reynaldo and Manuel, all surnamed Uyecio, entered into contracts to sell with petitioner covering seven lots in petitioner's Phase II project. Under the contracts to sell which were all dated May 21, 1999, each of the respondents would and did in fact pay a downpayment of ₱240,000, and the balance of ₱960,000 would be paid in 10 years at 21% interest per annum. Respondents paid their monthly amortizations until April 2001 when they suspended further payments, the promised delivery date of the project not having been met, and the improvements and amenities reflected in the sales brochures were yet to be introduced or completed.[2]

Respondents thus sent petitioner a letter demanding the completion of the entire project and informing it that they were suspending the payment of monthly amortizations on account of "contractual breach."[3]

Petitioner for its part also sent letters to respondents advising them of their default in the payment of their monthly amortizations covering the period March 2001 up to the third quarter of 2002.[4]

On August 22, 2002, respondents lodged a complaint[5] against petitioner at the Housing and Land Use Regulatory Board

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[1] *Rollo*, p. 57.

[2] *Id.* at 59-60.

[3] *Id.* at 60.

[4] *Id.* at 182-188.

[5] *Id.* at 56-62.

(HLURB) Regional Field Office No. IV, praying for the completion of the project within six months or, in the alternative, for the refund of their total payments to bear interest at 21% per annum reckoned from February 1999 until said payments are finally paid, and for the award of moral and exemplary damages and attorney's fees.

In an ocular inspection of the subdivision conducted on December 3, 2002, the HLURB Regional Office found that, indeed, the project remained unfinished. In his Report,[6] Engineer Rey E. Musa of the said office reflected the following findings:

x x x x x x x x x

1. The following features and amenities for the whole Phase II indicated in the brochure are yet to be provided/constructed, to wit:

a. Church
b. Electrical facilities including concrete posts & mercury street lamps
b. Clubhouse

1. Basketball court
2. Tennis court
3. Swimming pool
4. Multi-purpose Hall

d. Property perimeter wall for security and privacy

e. Landscaped garden & promenade

2. There is an existing water tanks [sic] in Phase II, however, not yet operational.

3. There is no sewerage water treatment plant within the whole project. (Emphasis supplied)

By petitioner's claim, "the basic components of [the] subdivision development are almost 100% complete,"[7] in support of which

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[6] HLURB Record, p. 58.

[7] *Rollo*, p.197.

it submitted the report of its project engineer Gregorio Evangelio[8] stating that all constructions relating to earthworks, concrete works and drainage system had been done with, while the water distribution system was 98% finished. The report went on to state, however, that works on the electrical distribution system and perimeter fence remained at 5% and 50%, respectively, as of September 2002.[9]

Petitioner disclaimed having had any participation in the preparation of the advertising materials distributed by the marketing firm Asian Pacific Realty & Brokerage, Inc., a separate and distinct entity.[10]

To further shore up its case, petitioner reiterated that it is not precluded from asking from the HLURB for extension of time to complete the project, citing License to Sell No. R4-98-12-0203[11] which provides, among other things, that it could

x x x x x x x x x

2. Apply for an extension of time to complete the development in case the project cannot be completed within the prescribed period before its expiration;

x x x x x x x x x

(Underscoring supplied)

HLURB, by letter dated November 5, 2003,[12] in fact granted petitioner an extension until September 2004 to complete Phase II-B of the project.

By Decision[13] of June 23, 2003, the HLURB ruled in favor of respondents, disposing as follows:

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[8] *Id.* at 203.

[9] *Ibid.*

[10] *Id.* at 65.

[11] *Id.* at 205.

[12] *Id.* at 204.

[13] *Id.* at 82-90.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainants and against the respondent to read as follows:

1. Ordering the **rescission** of the Contracts to Sell between the complainants and respondent;

2. Ordering the respondent to refund complainant Romeo Uyecio the amount of ₱1,224,000.00 with interest at 12% per annum from the filing of the complaint until full payment;

3. Ordering the respondent to refund the complainant Reynaldo Uyecio the amount of ₱816,000.00 with interest at 12 % per annum from the filing of the complaint until full payment;

4. Ordering the respondent to refund complainants Amaris Uyecio and Manuel Uyecio the amount of ₱408,000.00 each with interest at 12 % per annum from the filing of the complaint until full payment;

5. Ordering the respondent to pay complainant(s) the amount of ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, ₱50,000.00 as attorney's fees to be divided among the complainants in proportion to their respective claims;

6. Ordering the respondent to pay this Board ₱20,000.00 as administrative fine for violation of Sections 19 and 20 in relation to Section 38 of P.D. 957.

SO ORDERED. (Emphasis and underscoring supplied)

The HLURB Board of Commissioners (First Division) to which petitioner appealed the decision via petition for review denied its petition by Decision[14] of December 5, 2003 and Resolution[15] of March 31, 2004.

The Office of the President (OP) affirmed the HLURB decision. The Court of Appeals in turn affirmed[16] that of the HLURB.

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[14] *Id.* at 91-94.

[15] *Id.* at 95-97.

[16] Decision dated October 16, 2006, penned by Justice Regalado E. Maambong with the concurrence of Justices Marina L. Buzon and Japar B. Dimaampao, CA *rollo*, pp. 170-188.

Hence, the present petition for review, petitioner faulting the Court of Appeals in upholding the rescission of the contracts to sell, in granting respondents' prayer for refund with exorbitant interest, and in upholding the award of moral and exemplary damages and attorney's fees.[17]

The Court finds the issues raised by petitioner bearing on findings of facts to be mere rehash of those already passed upon by the HLURB, the OP and the appellate court.

In the absence of substantial showing that the findings of facts of administrative bodies charged with their specific field of expertise were arrived at from an erroneous estimation of the evidence presented, they are considered conclusive, and in the interest of stability of the governmental structure, are not to be disturbed.[18]

In the present case, petitioner has not shown any ground to merit a disturbance of the findings of the HLURB which have been sustained by the OP and the appellate court.

It bears noting that petitioners' project accomplishment report and the HLURB letter dated November 5, 2003 granting petitioner's request for the completion of the subdivision until September 2004, which request does not even appear to have been made "within the prescribed period before its expiration," corroborate the findings in the HLURB ocular inspection report and respondents' claim that petitioner did not finish the project within the announced time frame. Petitioner's counterclaim that it was respondents who were in default is immaterial to the issue of its failure to finish its project on time.

En passant, even assuming arguendo that respondents defaulted, albeit the evidence shows otherwise, that did not prevent petitioner from exercising its option to cancel the contracts to sell. It did not, however. It merely demanded in May 2002

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[17] *Id.* at 45.

[18] *Malonzo v. COMELEC*, G.R. No. 127066, March 11, 1997, 269 SCRA 380.

the payment of overdue amortizations from respondents, after the lapse of 14 months of alleged default.

The, fact is that respondents suspended their payment of monthly amortizations pending compliance by petitioner with its contractual obligation, which is justified under Section 23 of Presidential Decree No. 957.[19] Petitioner's attempt at reversal of the Court of Appeals' decision thus fails.

A word on the application by the HLURB, the OP, and the appellate court of Article 1191[20] of the Civil Code on rescission.

The case involves contracts to sell, not a contract which absolutely conveys real property. Distinguishing the two contracts, the Court, in *Rillo v. Court of Appeals,*[21] held:

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[19] "Section 23. Non-Forfeiture of Payments.—No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer, may at his option, be reimbursed the total amount paid including amortization interest but excluding delinquency interest, with interest thereon at the legal rate."

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

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

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

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

[21] G.R. No. 125347, June 19, 1997, 274 SCRA 461.

x x x In a contract to sell real property on installments, the **full payment** of the purchase price is a **positive suspensive condition**, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force. The transfer of ownership and title would occur after full payment of the purchase price. We held in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc*. that there can be **no rescission** of an obligation that is still non-existent, the **suspensive condition not having happened**. (Citations omitted; emphasis and underscoring supplied)

Articles 1191 of the Civil Code does not thus apply to a contract to sell since there can be no rescission of an obligation that is still non-existent, the suspensive condition not having occurred. In other words, the breach contemplated in Article 1191 is the obligor's failure to comply with an obligation already extant, like a contract of sale, not a failure of a condition to render binding that obligation.[22]

Cancellation, not rescission, of the contract to sell is thus the correct remedy in the premises.

On the issue of damages, the Court sustains the award of moral and exemplary damages given the testimonial evidence of respondents thereon.

As for the award of ₱50,000 attorney's fees, the Court sustains it too, respondents having been compelled to litigate with petitioner and incur expenses to enforce and protect their interests.[23]

On the issue of interest, the imposition of 12% per annum interest on the amount of refund must be reduced to 6%,

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[22] *Cheng v. Genato*, 300 SCRA 722 (1998). *Vide Gomez v. Court of Appeals*, 340 SCRA 720 (2000); *Padilla v. Spouses Paredes*, 328 SCRA 434 (2000); *Valarao v. Court of Appeals*, 304 SCRA 155 (1999); *Pangilinan v. Court of Appeals*, 279 SCRA 590 (1997).

[23] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: x x x (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest x x x x (New Civil Code).

conformably with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[24] and in *Fil-Estate Properties, Inc. v. Go*,[25] the amount to be refunded being neither a loan nor a forbearance of money, goods or credit.

WHEREFORE, the October 16, 2006 Decision and January 10, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 87027 are *AFFIRMED* with *MODIFICATION* in light of the foregoing disquisitions.

As modified, the dispositive portion of the decision reads:

WHEREFORE, judgment is rendered in favor of the plaintiffs and against the defendant to read as follows:

1. Ordering the cancellation of the Contracts to Sell between the plaintiffs and defendant;
2. Ordering the defendant to refund the plaintiff Romeo Uyecio the amount of ₱1,224,000 with interest at 6% per annum from the filing of the complaint until full payment;
3. Ordering the defendant to refund the plaintiff Reynaldo Uyecio the amount of ₱816,000 with interest at 6% per annum from the filing of the complaint until full payment;
4. Ordering the defendant to refund plaintiffs Amaris Uyecio and Manuel Uyecio the amount of ₱408,000 each with interest at 6% per annum from the filing of the complaint until full payment;
5. Ordering the defendant to pay plaintiffs the amount of ₱100,000 as moral damages, ₱100,000 as exemplary damages, ₱50,000 as attorney's fees to be divided among the plaintiffs in proportion to their respective claims;

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[24] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[25] G.R. No. 165164, August 17, 2007, 530 SCRA 621. In this case, the Court decreed that the doctrine in *Eastern Shipping Lines Inc. v. CA* was to control despite HLURB Resolution No. R-421 (Series of 1998) pegging a uniform rate of interest of 12% per annum for HLURB decisions involving refunds.

6. Ordering the defendant to pay [the Housing and Land Use Regulatory] Board ₱20,000 as administrative fine for violation of Sections 19 and 20 in relation to Section 38 of P.D. 957.

Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177898. August 13, 2008]

SIGMA HOMEBUILDING CORPORATION, *petitioner, vs.* **INTER-ALIA MANAGEMENT CORPORATION, DEVELOPMENT BANK OF RIZAL, INTERCON FUND RESOURCES CORPORATION, HASTING REALTY and DEVELOPMENT CORPORATION, and REGISTER OF DEEDS for the PROVINCE of CAVITE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; NATURE.— A petition for annulment of judgment is an extraordinary remedy and is not to be granted indiscriminately by the Court. It is allowed only in exceptional

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[*] Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

cases and cannot be used by a losing party to make a mockery of a duly promulgated decision long final and executory. The remedy may not be invoked where the party has availed himself of the remedy of new trial, appeal, petition for relief or other appropriate remedy and lost, or where he has failed to avail himself of those remedies through his own fault or negligence.

2. ID.; ID.; JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL, THE WINNING PARTY SHOULD NOT BE DEPRIVED OF THE FRUITS OF THE VERDICT.— Litigation must end sometime. It is essential to an effective and efficient administration of justice that, once a judgment becomes final, the winning party should not be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that undesirable result.

APPEARANCES OF COUNSEL

Cesar Amoranto for Intercon Fund Resources Corp.

Efrenilo M. Cayanga Zuniga & Angel Law Offices for Hasting Realty and Dev't. Corp.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Sigma Homebuilding Corporation filed a complaint for annulment of sale, cancellation of titles, reconveyance and damages[1] against respondents, namely, Inter-Alia Management Corporation (Inter-Alia), Intercon Fund Resources Corporation (Intercon), Hasting Realty and Development Corporation (Hasting),[2] Development Bank of Rizal (DBR)[3] and the Register of Deeds of the Province of Cavite, in the Regional Trial Court (RTC) of Trece Martires City, Cavite, Branch 23.

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[1] Docketed as Civil Case No. TMCV-0021-02.

[2] Also referred to as Hastings in some of the pleadings.

[3] Philippine Deposit Insurance Corporation (PDIC), as receiver of

Petitioner alleged that its real properties[4] in Tanza, Cavite were sold by its assistant vice-president, Augusto S. Parcero, to Inter-Alia without its knowledge and consent and without the requisite board resolution authorizing the same. Inter-Alia, in turn, sold them to DBR. DBR then sold the same to Intercon which conveyed them to Hasting.

Summonses were served on all respondents, except Inter-Alia as it no longer held office at its given address.

For its part, Hasting filed a motion to dismiss on the ground that the complaint stated no cause of action, among others. It stated that the annotations in petitioner's cancelled TCTs (which were attached to the complaint) clearly showed that Parcero was authorized to sell the lots to Inter-Alia. Also attached to the complaint were the duly notarized deed of absolute sale (signed and executed by Parcero, in representation of petitioner) and the acknowledged receipt of the total consideration in the amount of ₱1,522,920.00. Hasting went on to allege that, based on the complaint, petitioner might not even be a real party in interest to the subsequent successive transfers of the properties to the different respondents. Thus, it had no cause of action for annulment of sale.

In its comment/opposition to Hasting's motion to dismiss, petitioner merely insisted that it had a cause of action but did not controvert Hasting's material assertions.

Respondent Intercon filed an answer.[5] The other respondents, however, were not able to file their respective responsive pleadings.

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respondent DBR, was named as one of the defendants in petitioner's complaint for annulment of sale. However, it was no longer impleaded as a respondent in the petition for review filed in this Court.

[4] With an approximate total area of 126,910 sq. m.

[5] It essentially denied the material allegations in the complaint and claimed that it bought the subject realties in good faith.

Subsequently, in an order dated July 3, 2002, the RTC dismissed the complaint for failure to state a cause of action. It also ruled that the action for reconveyance was not proper since the properties had already passed on to the hands of innocent purchasers in good faith and for value. Petitioner moved for reconsideration. It was denied.[6]

Petitioner appealed to the CA.[7] The appellate court affirmed the decision of the court *a quo*.[8] The CA also denied petitioner's motion for reconsideration.[9]

Petitioner's petition for review on *certiorari* in this Court[10] was denied for failure to show that the appellate court had committed any reversible error in the assailed judgment.[11] Its motion for reconsideration was likewise denied.[12]

Thereafter, petitioner filed in the CA a petition for annulment of the order dated July 3, 2002 of the RTC on the ground of lack of jurisdiction under Rule 47 of the Rules of Court.[13] It argued that the trial court overstepped its boundaries when it dismissed the complaint not only against Hasting but also against the other respondents despite the fact that it was only Hasting that moved for its dismissal.

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[6] Dated October 25, 2002.

[7] Docketed as CA-G.R. CV No. 76928.

[8] Penned by Associate Justice Eliezer R. de los Santos (now retired) and concurred in by Associate Justices Eugenio S. Labitoria (now retired) and Arturo D. Brion (now a member of this Court) of the Former Third Division of the Court of Appeals. *Rollo*, pp. 120-134. Dated August 10, 2005.

[9] *Id.*, p.146. Dated October 20, 2005.

[10] Docketed as G.R. No. 170174.

[11] Resolution dated February 1, 2006.

[12] Dated April 5, 2006.

[13] Docketed as CA-G.R. SP No. 98170.

The CA denied the petition outright.[14] It held that for an action for annulment of judgment based on lack of jurisdiction to prosper, it was not sufficient that respondent court committed grave abuse of discretion amounting to lack of jurisdiction; petitioner must show that said court absolutely lacked jurisdiction or that it should not have taken cognizance of the case because the law did not vest it with jurisdiction over the subject matter.

More importantly, the appellate court found that petitioner had already availed of the remedy of ordinary appeal before the CA and this Court. Having been unsuccessful in its appeal before the CA under Rule 41 and the Supreme Court under Rule 45, petitioner could no longer avail of the petition for annulment of judgment, especially since the issue relied upon in the petition could have been properly raised in its appeal in the CA (as, in fact, it was so raised by petitioner and passed upon by the appellate court in said appeal). The CA denied petitioner's motion for reconsideration.[15]

Undeterred, petitioner filed a petition for review on *certiorari* in this Court. It was, however, denied on August 8, 2007 for late filing.[16] On November 26, 2007, its motion for reconsideration

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[14] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Lucenito N. Tagle (retired) and Romeo F. Barza of the Former Special Seventeenth Division of the Court of Appeals. *Rollo*, pp. 24-25.

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

[16] Petitioner filed a motion for extension of time to file petition for review on *certiorari*. It was denied in a resolution dated June 18, 2007 for failure of petitioner's counsel to submit his IBP O.R. No. showing proof of payment of IBP dues for the current year (as the IBP O.R. No. is dated November 20, 2006) and for submitting an affidavit of service of the motion that fails to comply with the 2004 Rules on Notarial Practice on competent evidence of affiant's identity. Petitioner filed a motion for reconsideration of said resolution. Its counsel contended that while his IBP O.R. is dated November 20, 2006, he actually made two (2) payments on said date – one for the year 2006 and past years and another for the year 2007. Said counsel admitted his non-compliance with the 2004 Rules on Notarial Practice

was denied with finality. Thus, the August 8, 2007 resolution became final and executory on January 18, 2008. Entry of judgment was made on April 25, 2008.

But petitioner stubbornly refuses to give up. In a letter-appeal dated June 30, 2008,[17] it implored this Court to take another hard look at the merits of its case. Petitioner reiterated that it was effectively deprived of its right to due process when the RTC dismissed the complaint against the other respondents. It also pleaded for a liberal interpretation of the rules of procedure.

The letter-appeal is without merit.

The letter-appeal is actually in the nature of a second motion for reconsideration which is a prohibited pleading under the Rules of Court.[18] Worse, it was filed despite the fact that an entry of judgment had already been made. It was obviously a ruse meant to evade the effects of the final and executory resolutions of this Court.

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on competent evidence of affiant's identity. However, he explained that the same was due to mere inadvertence on his part and that he subsequently filed a petition for review with due compliance with the rules. Petitioner's motion was denied on October 3, 2007.

[17] Received by this Court on said date. *Rollo,* pp. 214-230.

[18] Section 4 of Rule 56-B, which pertains to the procedure in the Supreme Court for appealed cases, provides:

Sec. 4. *Procedure*. – The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, Rules 45, 48, Sections 1, 2 and 5 to 11 of Rules 51, 52 and this Rule.

Reference to Section 2, Rule 52, which governs motions for reconsideration filed in the Court of Appeals and which equally applies to the filing of such a motion in the Supreme Court as explicitly stated in Section 4, Rule 56-B, would reveal that:

Sec. 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Moreover, even if we were to grant petitioner's letter-appeal based on its alleged substantial compliance with the pertinent rules of procedure, the substantive aspect of its arguments left much to be desired.

Petitioner cannot successfully argue that the dismissal of the complaint *motu proprio* against the other respondents effectively deprived it of its right to due process. It must be pointed out that petitioner's complaint went to great lengths to trace who the first buyer of its properties was (Inter-Alia) down to the current owner thereof, which is Hasting. As title to the contested properties is now vested in Hasting, there was really no need for petitioner to implead all the other respondents for the successful prosecution of its action for annulment of sale against Hasting. A perusal of the complaint reveals that all the other respondents were not even real parties in interest[19] in this case, to begin with. The only real parties in interest in this particular controversy were petitioner and Hasting for they were the only ones who stood to be benefitted or injured, as the case may be, by the judgment in the suit.

Furthermore, the CA was correct in holding that, as petitioner had already availed of the remedy of appeal, it could no longer avail of a petition for annulment of judgment. A petition for annulment of judgment is an extraordinary remedy and is not to be granted indiscriminately by the Court. It is allowed only in exceptional cases and cannot be used by a losing party to make a mockery of a duly promulgated decision long final and executory.[20] The remedy may not be invoked where the party

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[19] Section 2, Rule 3 of the Rules of Court defines a real party in interest:

Sec. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[20] *Veneracion v. Mancilla*, G.R. No. 158238, 20 July 2006, 495 SCRA 712, 724 and *Republic v. "G" Holdings*, G.R. No. 141241, 22 November 2005, 475 SCRA 608, 617.

has availed himself of the remedy of new trial, appeal, petition for relief or other appropriate remedy and lost, or where he has failed to avail himself of those remedies through his own fault or negligence.[21]

Litigation must end sometime. It is essential to an effective and efficient administration of justice that, once a judgment becomes final, the winning party should not be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that undesirable result.[22] Thus, we deem it fit to finally put an end to the present controversy.

WHEREFORE, the letter-appeal is hereby *DENIED* for lack of merit.

Treble costs against petitioner.

No further pleadings shall be entertained in this case.

SO ORDERED.

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

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[21] *Id., Republic v. "G" Holdings,* pp. 617-618.

[22] *Republic v. "G" Holdings, supra* at 622.

FIRST DIVISION

[G.R. No. 182694. August 13, 2008]

IGMIDIO MADRIGAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS, GENERALLY NOT DISTURBED ON APPEAL; CASE AT BAR.— [W]e see no reason to disturb the factual finding of the RTC, as upheld by the CA, that petitioner was in possession of an unlicensed firearm with live ammunition during the election period in 1998. This is entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts and circumstances which would substantially affect the disposition of the case.

2. CRIMINAL LAW; REPUBLIC ACT 8294; PROVIDES THAT A PERSON MAY NOT BE CONVICTED FOR ILLEGAL POSSESSION OF FIREARM IF ANOTHER CRIME WAS COMMITTED.— Section 1 of RA 8294 expressly provides that a person may not be convicted for illegal possession of firearm if another crime was committed: "SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows: SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully x x x possess any low powered firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: **Provided, That no other crime was committed."** Whether there can be a separate offense of illegal possession of firearm and ammunition if there is another crime committed was already addressed in *Agote v. Lorenzo*. Agote, like petitioner herein, was convicted

of separate charges of (1) illegal possession of firearm and ammunition and (2) violation of the election gun ban by the RTC and the CA. However, applying Section 1 of RA 8294, we set aside Agote's conviction for illegal possession of firearm since another crime was committed at the same time (violation of the election gun ban).

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CORONA, *J.*:

For possession of an unlicensed .38 caliber revolver during the 1998 election period, petitioner Igmidio Madrigal was charged in the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93 with two separate crimes: (1) violation of PD 1866, as amended by RA 8294[1] and (2) violation of the Omnibus Election Code, as amended by RA 7166 (Gun Ban).[2] The information in Criminal Case No. 1025-SPL read:

That on or about March 31, 1998, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this [honorable] [c]ourt, the said accused during and within the election period from January 11 to June 10, 1998 did then and there willfully, unlawfully and criminally have in his possession, custody and control a caliber .38 Smith & Wesson [r]evolver with no serial number containing live ammunition, without first securing from the [COMELEC] the required permit to carry the same outside his residence.

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[1] An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes." Date of effectivity was July 6, 1997.

[2] Art. XXII, Sec. 261 (q).

Contrary to law.

while that in Criminal Case No. 1026-SPL stated:

That on or about March 31, 1998, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this [honorable] [c]ourt, the said accused, without the required license/ permit from lawful authorities did then and there willfully, unlawfully and feloniously have in his possession, custody and control a caliber .38 Smith & Wesson [r]evolver with live ammunition and a split [(sic)] shell without any number.

Contrary to law.

Petitioner pleaded not guilty on arraignment. After trial on the merits, the RTC ruled:

In view thereof, the Court hereby renders judgment:

1. In Criminal Case No. 1026-SPL, finding accused Igmidio Madrigal *y* Macaraig guilty beyond reasonable doubt of the crime of [v]iolation of P.D. 1866 as amended by R.A. 8294 and hereby sentencing accused to suffer the indeterminate penalty of imprisonment from two (2) years, eleven (11) months and ten (10) days of *prision correccional* as minimum to [f]ive (5) years, [f]our [nine] (sic) (4) months and twenty (20) days of *prision correccional* as maximum and to pay a fine of Fifteen Thousand (₱15,000.00) Pesos;

2. [2.] In Criminal [C]ase No. 1025-SPL, finding accused Igmidio Madrigal ~~y~~ Macaraig guilty beyond reasonable doubt of the crime of [v]iolation of the Omnibus Election Code (Gun Ban) hereby sentencing accused to suffer the indeterminate penalty of imprisonment from one year as minimum to three (3) years as maximum with the accessory penalties provided for by law.

Petitioner appealed the RTC decision. The CA affirmed petitioner's conviction in both offenses but reduced the penalty imposed on him in Criminal Case No. 1026-SPL (illegal possession of firearm).[3]

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[3] The penalty in Criminal Case No. 1026-SPL was modified as follows: "Accused-appellant is sentenced to suffer the indeterminate sentence ranging

In this petition for review on certiorari, petitioner seeks his acquittal from the charges against him. He questions the findings of the RTC, as upheld by the CA, of his guilt beyond reasonable doubt of the crimes of illegal possession of firearm and violation of the election gun ban. He also questions his conviction for both offenses on the ground that RA 8294 proscribes conviction under it if another crime has been committed.

We partially grant the petition.

At the outset, we see no reason to disturb the factual finding of the RTC, as upheld by the CA, that petitioner was in possession of an unlicensed firearm with live ammunition during the election period in 1998. This is entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts and circumstances which would substantially affect the disposition of the case.[4]

However, petitioner is correct in assailing his conviction for both offenses. Section 1 of RA 8294 expressly provides that a person may not be convicted for illegal possession of firearm if another crime was committed:

> SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:
>
> SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully xxx possess any low powered firearm of similar firepower, part of firearm, ammunition, or machinery, tool or

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from four (4) years, two (2) months and one (1) day in its minimum to six (6) years in its maximum and to pay a fine of ₱15,000.00."*Rollo*, p. 70.

[4] *Tan v. People of the Philippines*, G.R. No. 153460, 29 January 2007, 513 SCRA 194, 201-202.

instrument used or intended to be used in the manufacture of any firearm or ammunition: **Provided, That no other crime was committed.** (emphasis supplied)

Whether there can be a separate offense of illegal possession of firearm and ammunition if there is another crime committed was already addressed in *Agote v. Lorenzo*.[5] Agote, like petitioner herein, was convicted of separate charges of (1) illegal possession of firearm and ammunition and (2) violation of the election gun ban by the RTC and the CA. However, applying Section 1 of RA 8294, we set aside Agote's conviction for illegal possession of firearm since another crime was committed at the same time (violation of the election gun ban).

WHEREFORE, the petition is hereby *PARTIALLY GRANTED*. The January 21, 2008 decision and April 24, 2008 resolution of the Court of Appeals in CA-G.R. CR No. 26869 are *AFFIRMED* insofar as petitioner was found guilty beyond reasonable doubt in Criminal Case No. 1025-SPL and sentenced to suffer the indeterminate penalty of imprisonment from one year as minimum to three years as maximum with the accessory penalties provided for by law. The said decision and resolution are, however, *REVERSED and SET ASIDE* insofar as petitioner was found guilty of illegal possession of firearm. Criminal Case No. 1026-SPL is *DISMISSED* and petitioner is hereby *ACQUITTED* therein.

SO ORDERED.

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

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[5] G.R. No. 142675, 22 July 2005, 464 SCRA 60.

EN BANC

[G.R. No. 166715. August 14, 2008]

ABAKADA GURO PARTY LIST (formerly AASJS)* **OFFICERS/MEMBERS SAMSON S. ALCANTARA, ED VINCENT S. ALBANO, ROMEO R. ROBISO, RENE B. GOROSPE, and EDWIN R. SANDOVAL,** *petitioners, vs.* **HON. CESAR V. PURISIMA, in his capacity as Secretary of Finance, HON. GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue, and HON. ALBERTO D. LINA, in his Capacity as Commissioner of Bureau of Customs,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; EXPLAINED.— An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication. A closely related requirement is ripeness, that is, the question must be ripe for adjudication. And a constitutional question is ripe for adjudication when the governmental act being challenged has a direct adverse effect on the individual challenging it. Thus, to be ripe for judicial adjudication, the petitioner must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision of the Court.

2. ID.; ID.; CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; PUBLIC OFFICE; NATURE.— Public office is a public trust. It must be discharged by its holder not for his own personal gain but for the benefit of the public for whom he holds it in trust. By demanding accountability and service with responsibility, integrity, loyalty, efficiency, patriotism and justice, all government officials and employees have the duty to be responsive to the needs of the people they are called upon to serve.

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* Advocates and Adherents of Social Justice for School Teachers and Allied Workers.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PUBLIC OFFICERS ENJOY THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR DUTIES.— Public officers enjoy the presumption of regularity in the performance of their duties. x x x The presumption is disputable but proof to the contrary is required to rebut it. It cannot be overturned by mere conjecture or denied in advance x x x.

4. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; A LAW ENACTED BY CONGRESS ENJOYS THE STRONG PRESUMPTION OF CONSTITUTIONALITY.— A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal one.

5. ID.; ID.; CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; A SYSTEM OF INCENTIVES FOR EXCEEDING THE SET EXPECTATIONS OF A PUBLIC OFFICE IS NOT ANATHEMA TO THE CONCEPT OF PUBLIC ACCOUNTABILITY.— Public service is its own reward. Nevertheless, public officers may by law be rewarded for exemplary and exceptional performance. A system of incentives for exceeding the set expectations of a public office is not anathema to the concept of public accountability. In fact, it recognizes and reinforces dedication to duty, industry, efficiency and loyalty to public service of deserving government personnel. In *United States v. Matthews*, the U.S. Supreme Court validated a law which awards to officers of the customs as well as other parties an amount not exceeding one-half of the net proceeds of forfeitures in violation of the laws against smuggling. Citing *Dorsheimer v. United States*, the U.S. Supreme Court said: "The offer of a portion of such penalties to the collectors is to stimulate and reward their zeal and industry in detecting fraudulent attempts to evade payment of duties and taxes." In the same vein, employees of the BIR and the BOC may by law be entitled to a reward when, as a consequence of their zeal in the enforcement of tax and customs laws, they exceed their revenue targets.

6. ID.; ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION; EQUALITY GUARANTEED UNDER THE EQUAL PROTECTION CLAUSE IS EQUALITY UNDER THE SAME CONDITIONS

AND AMONG PERSONS SIMILARLY SITUATED.— Equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished. When things or persons are different in fact or circumstance, they may be treated in law differently.

7. ID.; ID.; ID.; ID.; ID.; RECOGNIZES A VALID CLASSIFICATION.— The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary. With respect to RA 9335, its expressed public policy is the optimization of the revenue-generation capability and collection of the BIR and the BOC. Since the subject of the law is the revenue-generation capability and collection of the BIR and the BOC, the incentives and/or sanctions provided in the law should logically pertain to the said agencies. Moreover, the law concerns only the BIR and the BOC because they have the common distinct primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges.

8. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-LEGISLATIVE OR RULE-MAKING POWER; VALID DELEGATION OF LEGISLATIVE POWER; TESTS.— Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.

9. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; SECURITY OF TENURE; NOT VIOLATED IN CASE AT BAR.— RA 9335 in no way violates the security of tenure of officials and employees of the BIR and the BOC. The guarantee of security of tenure

only means that an employee cannot be dismissed from the service for causes other than those provided by law and only after due process is accorded the employee. In the case of RA 9335, it lays down a reasonable yardstick for removal (when the revenue collection falls short of the target by at least 7.5%) with due consideration of all relevant factors affecting the level of collection. This standard is analogous to inefficiency and incompetence in the performance of official duties, a ground for disciplinary action under civil service laws. The action for removal is also subject to civil service laws, rules and regulations and compliance with substantive and procedural due process.

10. ID.; CONSTITUTIONAL LAW; CONSTITUTION; LEGISLATIVE DEPARTMENT; CONGRESSIONAL OVERSIGHT; NATURE.— [C]ongressional oversight is not unconstitutional *per se*, meaning, it neither necessarily constitutes an encroachment on the executive power to implement laws nor undermines the constitutional separation of powers. Rather, it is integral to the checks and balances inherent in a democratic system of government. It may in fact even enhance the separation of powers as it prevents the over-accumulation of power in the executive branch. However, to forestall the danger of congressional encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on Congress. It may not vest itself, any of its committees or its members with either executive or judicial power. And, when it exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified under the Constitution, including the procedure for enactment of laws and presentment. Thus, any post-enactment congressional measure x x x should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following: (1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation and (2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation. Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. Legislative vetoes fall in this class.

11. ID.; ID.; ID.; ID.; CONGRESSIONAL VETO; EXPLAINED.— Legislative veto is a statutory provision requiring the President or an administrative agency to present the proposed implementing rules and regulations of a law to Congress which, by itself or through a committee formed by it, retains a "right" or "power" to approve or disapprove such regulations before they take effect. As such, a legislative veto in the form of a congressional oversight committee is in the form of an inward-turning delegation designed to attach a congressional leash (other than through scrutiny and investigation) to an agency to which Congress has by law initially delegated broad powers. It radically changes the design or structure of the Constitution's diagram of power as it entrusts to Congress a direct role in enforcing, applying or implementing its own laws.

12. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-LEGISLATIVE OR RULE-MAKING POWER; ADMINISTRATIVE RULES OR REGULATIONS; KINDS.— Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative competence. It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards. In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).

13. ID.; ID.; ID.; ID.; ID.; HAVE THE FORCE OF LAW AND ARE ENTITLED TO RESPECT.— Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. Congress, in the guise of assuming the role of an overseer, may not pass upon

their legality by subjecting them to its stamp of approval without disturbing the calculated balance of powers established by the Constitution. In exercising discretion to approve or disapprove the IRR based on a determination of whether or not they conformed with the provisions of RA 9335, Congress arrogated judicial power unto itself, a power exclusively vested in this Court by the Constitution.

14. ID.; CONSTITUTIONAL LAW; CONSTITUTION; LEGISLATIVE DEPARTMENT; PRINCIPLES OF BICAMERALISM AND THE RULE ON PRESENTMENT; VIOLATED BY THE REQUIREMENT THAT THE IMPLEMENTING RULES OF A LAW BE SUBJECTED TO APPROVAL BY CONGRESS AS A CONDITION FOR THEIR EFFECTIVITY.— [T]he requirement that the implementing rules of a law be subjected to approval by Congress as a condition for their effectivity violates the cardinal constitutional principles of bicameralism and the rule on presentment. Section 1, Article VI of the Constitution states: "Section 1. **The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives,** except to the extent reserved to the people by the provision on initiative and referendum." Legislative power (or the power to propose, enact, amend and repeal laws) is vested in Congress which consists of two chambers, the Senate and the House of Representatives. A valid exercise of legislative power requires the act of both chambers. Corrollarily, it can be exercised neither solely by one of the two chambers nor by a committee of either or both chambers. Thus, assuming the validity of a legislative veto, both a single-chamber legislative veto and a congressional committee legislative veto are invalid. x x x Every bill passed by Congress must be presented to the President for approval or veto. In the absence of presentment to the President, no bill passed by Congress can become a law. In this sense, law-making under the Constitution is a joint act of the Legislature and of the Executive. Assuming that legislative veto is a valid legislative act with the force of law, it cannot take effect without such presentment even if approved by both chambers of Congress. In sum, two steps are required before a bill becomes a law. First, it must be approved by both Houses of Congress. Second, it must be presented to and approved by the President.

15. ID.; ID.; ID.; ID.; DELEGATION OF POWER TO FORMULATE RULES TO IMPLEMENT A LAW; RULE.— Where Congress delegates the formulation of rules to implement the law it has enacted pursuant to sufficient standards established in the said law, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. And it may be deemed to have left the hands of the legislature when it becomes effective because it is only upon effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Subject to the indispensable requisite of publication under the due process clause, the determination as to when a law takes effect is wholly the prerogative of Congress. As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.

16. ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; VIOLATED BY A PROVISION THAT REQUIRES CONGRESS OR ITS MEMBERS TO APPROVE THE IMPLEMENTING RULES OF LAW AFTER IT HAS ALREADY TAKEN EFFECT; CASE AT BAR.— From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional. Under this principle, a provision that requires Congress or its members to approve the implementing rules of a law after it has already taken effect shall be unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by the members of the executive branch charged with the implementation of the law. Following this rationale, Section 12 of RA 9335 should be struck down as unconstitutional. While there may be similar provisions of other laws that may be invalidated for failure to pass this standard, the Court refrains from invalidating them wholesale but will do so at the proper time when an appropriate case assailing those provisions is brought before us.

17. ID.; ID.; STATUTES; SEPARABILITY CLAUSE; ELUCIDATED; CASE AT BAR.— In *Tatad v. Secretary of the Department of Energy*, the Court laid down the following rules: "The *general*

rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x The *exception to the general rule* is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them." The separability clause of RA 9335 reveals the intention of the legislature to isolate and detach any invalid provision from the other provisions so that the latter may continue in force and effect. The valid portions can stand independently of the invalid section. Without Section 12, the remaining provisions still constitute a complete, intelligible and valid law which carries out the legislative intent to optimize the revenue-generation capability and collection of the BIR and the BOC by providing for a system of rewards and sanctions through the Rewards and Incentives Fund and a Revenue Performance Evaluation Board.

18. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-LEGISLATIVE OR RULE-MAKING POWER; ADMINISTRATIVE RULES AND REGULATIONS; WHEN EFFECTIVE.— To be effective, administrative rules and regulations must be published in full if their purpose is to enforce or implement existing law pursuant to a valid delegation. The IRR of RA 9335 were published on May 30, 2006 in two newspapers of general circulation and became effective 15 days thereafter. Until and unless the contrary is shown, the IRR

are presumed valid and effective even without the approval of the Joint Congressional Oversight Committee.

TINGA, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; LEGISLATIVE DEPARTMENT; LEGISLATIVE VETO; ELUCIDATED.— The emergence of the legislative veto in the United States coincided with the decline of the non-delegation doctrine, which barred Congress from delegating its law-making powers elsewhere. Modern jurisprudence has authorized the delegation of lawmaking powers to administrative agencies, and there are resulting concerns that there is no constitutional assurance that the agencies are responsive to the people's will. From that framework, the legislative veto can be seen as a means of limiting agency rule-making authority by lodging final control over the implementing rules to Congress. "But instead of controlling agency policy in advance by laying out a roadmap in the statute creating the agency, Congress now proposes to control policy as it develops in notice-and-comment rulemaking, after the agency's expert staff and interested members of the public have had an opportunity to assist in its formation." It is a negative check by Congress on policies proposed by the agencies, and not a means for making policy directly. From the perspective of Congress, the legislative veto affords maximum consideration to the plenary power of legislation, as it bolsters assurances that the legislative policy embodied in the statute will be faithfully executed upon its implementation. The faithful execution of the laws of the land is a constitutional obligation imposed on the President, yet as a matter of practice, there could be a difference of opinion between the executive and legislative branches as to the meaning of the law. The clash may be especially telling if the President and Congress are politically hostile with each other, and it bears notice that the legislative veto in the United States became especially popular beginning in the early 1970s, when the ties between the Democratic-controlled Congress and the Republican President Richard Nixon were especially frayed. More recently, the current U.S. President Bush has had a penchant of attaching "signing statements" to legislation he has approved, such statements indicating his own understanding of the bill he is signing into law. The legislative veto, as a practical matter, allows Congress

to prevent a countervailing attempt by the executive branch to implement a law in a manner contrary to the legislative intent. There is nothing obnoxious about the policy considerations behind the legislative veto. Since the courts, in case of conflict, will uphold legislative intent over the executive interpretation of a law, the legislative veto could ensure the same judicially-confirmed result without need of elevating the clash before the courts. The exercise of the legislative veto could also allow both branches to operate within the grayer areas of their respective constitutional functions without having to resort to the judicial resolution of their potentially competing claims. x x x There are practical demerits imputed as well to the legislative veto, such as the delay in the implementation of the law that may ensue with requiring congressional approval of the implementing rules. Yet the question must ultimately rest not on the convenience or wisdom of the legislative veto device, but on whether it is constitutionally permissible.

2. ID.; ID.; STATUTES; ENACTMENT AND IMPLEMENTATION OF A LAW; PHASES.— We can consider that in the enactment and implementation of a law, there is a legislative phase and an executive phase. The legislative phase encompasses the period from the initiation of a bill in Congress until it becomes effective as a law. On the other hand, the executive phase begins the moment the law is effective and falls within the capacity of the executive branch to enforce. Notably, as such, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Now, subject to the indispensable requisite of publication under the due process clause, the determination as to when a law takes effect is wholly the prerogative of Congress. As such, it is only upon effectivity that the law may be executed, and the executive branch acquires the duties and powers to execute that law. Before that point, the role of the executive branch, particularly the President, is limited to signing or vetoing the law. All other powers of government that attach to the proposed law are exercised exclusively by Congress and are hence, legislative in character. In fact, the United States Supreme Court, speaking through Justice Black, has gone as far as to hold that the Constitution "limits [the President's] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."

3. ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; EXPLAINED.— It is viable to hold that any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law after the execution phase has begun violates the principle of separation of powers and is thus unconstitutional. Under this principle, a provision that requires Congress or its members to approve the Implementing Rules after the law has already taken effect is unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by those members of the executive branch charged with the implementation of the law. This time or phase demarcation not only affords a convenient yardstick by which to assess the constitutionality of a legislated role for Congress *vis-à-vis* a law, it also hews to the proper allocation of governmental powers. Again, the exercise of executive powers relative to a statute can only emanate after the effectivity of the law, since before that point, said law cannot be executed or enforced. Until a law becomes effective, there are no executive functions attached to the law.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-LEGISLATIVE OR RULE-MAKING POWER; DELEGABLE RULE-MAKING POWER; TYPES.— Section 12 of Rep. Act No. 9335, or any other provision of law granting components of the executive branch the power to formulate implementing rules, is a delegation of legislative power belonging to Congress to the executive branch. Congress itself has the power to formulate those particular rules and incorporate them in the law itself. What I believe Congress is precluded from doing is to exercise such power after the law has taken effect, in other words, after the execution phase has begun. Unless such a limitation were laid down, there would ensue undue encroachment by Congress in the exercise of legislative power. This delegable rule-making power may be classified into two types: (1) rules intended to regulate the internal management of the agencies themselves; and (2) rules supplementing a statute and intended to affect persons and entities outside the government made subject to agency regulation. Either case, the power of the executive branch to promulgate such rules springs from legislative delegation. In the Philippines, the power of executive officials to enact rules to regulate the internal

management of executive departments was specifically allocated to them by a statute, the Administrative Code of 1987, promulgated by President Aquino in the exercise of her then extant legislative powers. With respect to supplementary rules to particular legislation, the power of executive officials to formulate such rules derives from the legislation itself. But in no case does such power emanate actually from inherent executive power.

CARPIO, *J., separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; FUNCTION.— Implementation of the law is indisputably an Executive function. To implement the law, the Executive must necessarily adopt *implementing rules* to guide executive officials how to implement the law, as well as to guide the public how to comply with the law. These guidelines, known as implementing rules and regulations, can only emanate from the Executive because the Executive is vested with the power to implement the law. Implementing rules and regulations are the means and methods on how the Executive will execute the law after the Legislature has enacted the law. The Executive cannot implement the law without adopting implementing rules and regulations. The power of the Executive to implement the law necessarily includes all power "**necessary and proper**" to implement the law, including the power to adopt implementing rules and regulations. The grant of executive power to the President in the Constitution is a grant of all executive power. The power to adopt implementing rules is thus **inherent** in the power to implement the law. The power to adopt implementing rules and regulations is law-execution, not law-making. Within the sphere of its constitutional mandate to execute the law, the Executive possesses the power to adopt implementing rules to carry out its Executive function. This applies also to the Judiciary, which also possesses the inherent power to adopt rules to carry out its Judicial function. The Constitution mandates the President to "ensure that the laws be faithfully executed." Without the power to adopt implementing rules and regulations, the Executive cannot ensure the faithful execution of the law. Obviously, the President cannot personally execute the law but must rely on subordinate executive officials. The President is inutile without the power to prescribe rules

on how subordinate executive officials should execute the law. Thus, the President must necessarily give instructions to subordinate executive officials and the public — in the form of implementing rules and regulations — on how the law should be executed by subordinate officials and complied with by the public. If the Legislature can withhold from the Executive this power to adopt implementing rules and regulations in the execution of the law, the Executive is made subordinate to the Legislature, not its separate, co-ordinate and co-equal branch in Government.

2. ID.; ID.; ID.; ID.; INHERENT POWER OF THE EXECUTIVE TO ADOPT RULES AND REGULATIONS TO EXECUTE OR IMPLEMENT THE LAW; NATURE.— The inherent power of the Executive to adopt rules and regulations to execute or implement the law is different from the delegated legislative power to prescribe rules. The inherent power of the Executive to adopt rules to execute the law does not require any legislative standards for its exercise while the delegated legislative power requires sufficient legislative standards for its exercise.

3. ID.; ID.; ID.; ID.; WHETHER THE RULE-MAKING POWER BY THE EXECUTIVE IS A DELEGATED LEGISLATIVE POWER OR AN INHERENT EXECUTIVE POWER DEPENDS ON THE NATURE OF THE RULE-MAKING POWER INVOLVED.— Whether the rule-making power by the Executive is a delegated legislative power or an inherent Executive power depends on the nature of the rule-making power involved. If the rule-making power is inherently a legislative power, such as the power to fix tariff rates, the rule-making power of the Executive is a delegated legislative power. In such event, the delegated power can be exercised only if sufficient standards are prescribed in the law delegating the power. If the rules are issued by the President in implementation or execution of self-executory constitutional powers vested in the President, the rule-making power of the President is not a delegated legislative power. **The most important self-executory constitutional power of the President is the President's constitutional duty and mandate to "ensure that the laws be faithfully executed."** The rule is that the President can execute the law without any delegation of power from the legislature. Otherwise, the President becomes a mere figure-head and not the sole Executive of the Government.

Only if the law is incomplete, as when there are details to be filled in by the Executive under specified legislative standards before the law can be implemented, is the issuance of rules by the Executive anchored on the delegation of legislative power. Once the law is complete, that is, the Executive has issued the rules filling in the details of the law, the Executive may still issue rules to execute the complete law based now on the Executive's inherent power to execute the law.

4. ID.; ID.; ID.; ID.; SELF-EXECUTORY POWERS OF THE PRESIDENT; EXPLAINED.— *[T]here are constitutional powers vested in the Executive that are self-executory*. The President may issue "rules of a general or permanent character in implementation or execution" of such *self-executory constitutional powers*. The power to issue such rules is inherent in Executive power. Otherwise, the President cannot execute self-executory constitutional provisions without a grant of delegated power from the Legislature, a legal and constitutional absurdity. The President may even delegate to subordinate executive officials the President's inherent executive power to issue rules and regulations. Thus, pursuant to the President's self-executory power to implement the laws, the President has issued Executive and Administrative orders authorizing subordinate executive officials to issue implementing rules and regulations without reference to any legislative grant to do so x x x.

5. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; THE LEGISLATURE CANNOT APPROVE OR DISAPPROVE THE RULES AND REGULATIONS PROMULGATED BY EXECUTIVE AGENCIES.— [W]hether the rules are issued by Executive agencies pursuant to a delegated legislative power or pursuant to the Executive's inherent power to execute the law, the result is the same: the Legislature cannot approve or disapprove such rules and regulations promulgated by executive agencies. The adoption of such rules and regulations is purely an Executive function, whether pursuant to a delegated legislative power or pursuant to the Executive's inherent power. The delegated legislative power, often referred to as regulatory power of executive agencies, is not inherently an Executive power. However, once delegated in a law, the exercise of the delegated legislative power becomes a purely Executive function. The

Legislature cannot interfere in such function except through another law. The well-entrenched rule is that Legislative officers cannot exercise Executive functions. A law that invests Executive functions on Legislative officers is unconstitutional for violation of the separation of powers.

6. ID.; ID.; ID.; THE LEGISLATURE CAN INTERVENE IN THE EXECUTION OF THE LAW ONLY BY ENACTING ANOTHER LAW AMENDING OR REPEALING THE ACT OF THE EXECUTIVE.— The Legislature can intervene in the execution of the law only by enacting another law amending or repealing the act of the Executive. Any intervention by the Legislature other than through legislation is an encroachment on Executive power in violation of the separation of powers. Once the Legislature enacts a bill into law and presents it to the President, its law-making function is complete. What happens to the law thereafter becomes the domain of the Executive and the Judiciary. What the Legislature can do is to *investigate* or *oversee* the implementation of the law for the purpose of enacting remedial legislation. The Legislature can also withhold budgetary appropriation necessary to implement the law. However, the Legislature cannot interpret, expand, restrict, amend or repeal the law except through a new legislation.

7. ID.; ID.; ID.; ID.; LEGISLATIVE VETO; ELUCIDATED.— The approval requirement in Section 12 of RA 9335 is a classic form of the so-called **legislative veto**. The legislative veto is a device for the Legislature to usurp Executive or Judicial power in violation of the separation of powers. An American textbook writer explains the legislative veto in this manner: Congress, in an attempt to maintain more control over the President and over regulations promulgated by agencies of the federal government's executive branch, has in the past incorporated into legislation a provision known as the "legislative veto" or the "congressional veto." Congress sought by statute to give itself what the Constitution gives to the President. Congress typically utilized veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. **These provisions required the President or an agency official to present the proposed regulations to Congress, which retained a "right" to approve or disapprove any regulation before they take effect.** In the United States,

the constitutionality of the legislative veto was resolved in the 1983 case of *Immigration and Naturalization Service (INS) v. Chadha* where the U.S. Supreme Court declared legislative vetoes unconstitutional for violation of the Constitution's bicameralism and presentment provisions. Legislative vetoes are deemed legislative acts requiring compliance with the bicameralism and presentment provisions. Legislative acts are acts intended to affect the legal rights, obligations, relations or status of persons or entities outside the Legislature.

8. ID.; ID.; ID.; ID.; BICAMERALISM AND PRESENTMENT; DEFINED.— Bicameralism requires both chambers of Congress to act in approving legislation and Congress cannot delegate this power to only one chamber, or to a committee of either or both chambers. Presentment requires Congress to present to the President for approval or veto a legislation before it becomes law.

9. ID.; ID.; ID.; ID.; LEGISLATIVE POWER; EXPLAINED.— Legislative power is vested in Congress which consists of two chambers. Legislative power cannot be exercised solely by one of the two chambers. This precludes a one-chamber legislative veto because one chamber alone is not the Congress. The exercise of legislative power requires the act of both chambers of Congress. Legislative power cannot also be exercised by a committee of either or both chambers for such a committee is not the Congress. **Consequently, this precludes the exercise of legislative veto by a congressional committee of either or both chambers.**

10. ID.; ID.; ID.; ID.; NO BILL PASSED BY CONGRESS CAN BECOME A LAW WITHOUT PRESENTMENT TO THE PRESIDENT; EXCEPTIONS.— Every single bill passed by Congress must be presented to the President for approval or veto. No bill passed by Congress can become law without such presentment to the President. In this sense, law-making under the Constitution is a joint act of the Legislature and the Executive. A legislative veto, being a legislative act having the force of law, cannot take effect without such presentment even if both chambers of Congress approve the legislative veto. There are, of course, acts of Congress which the Constitution vests solely to Congress without the requirement of presentment to

the President. For example, under Section 23 (1), Article VI of the Constitution, Congress has the "sole power" to declare the existence of a state of war. Another example is Section 8, Article IX-B of the Constitution requiring Congressional consent before an elective or appointive public officer or employee can accept any present, emolument, office or title of any kind from a foreign government. These acts, however, are exceptions to the rule on presentment.

11. ID.; ID.; ID.; ID.; RULE ON BICAMERALISM; EXCEPTIONS.— There are also acts that the Constitution vests on a body composed of representatives of the two chambers. Under Section 18, Article VI of the Constitution, the Commission on Appointments is composed of 12 representatives from each chamber. Likewise, there are acts that the Constitution vests solely on one chamber of Congress. Under Section 21, Article VII of the Constitution, the Senate alone ratifies treaties entered into by the President. These acts, however, are exceptions to the rule on bicameralism.

APPEARANCES OF COUNSEL

Samson S. Alcantara, Ed Vincent S. Albano, Romeo R. Robiso, Rene Gorospe, & Edwin R. Sandoval for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for prohibition[1] seeks to prevent respondents from implementing and enforcing Republic Act (RA) 9335[2] (Attrition Act of 2005).

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[1] Under Rule 65 of the Rules of Court.

[2] An Act to Improve Revenue Collection Performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a Rewards and Incentives Fund and of a Revenue Performance Evaluation Board and for Other Purposes.

RA 9335 was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund (Fund) and a Revenue Performance Evaluation Board (Board).[3] It covers all officials and employees of the BIR and the BOC with at least six months of service, regardless of employment status.[4]

The Fund is sourced from the collection of the BIR and the BOC in excess of their revenue targets for the year, as determined by the Development Budget and Coordinating Committee (DBCC). Any incentive or reward is taken from the fund and allocated to the BIR and the BOC in proportion to their contribution in the excess collection of the targeted amount of tax revenue.[5]

The Boards in the BIR and the BOC are composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary, the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary, the Director General of the National Economic Development Authority (NEDA) or his/her Deputy Director General, the Commissioners of the BIR and the BOC or their Deputy Commissioners, two representatives from the rank-and-file employees and a representative from the officials nominated by their recognized organization.[6]

Each Board has the duty to (1) prescribe the rules and guidelines for the allocation, distribution and release of the Fund; (2) set criteria and procedures for removing from the service

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[3] Section 2, RA 9335.

[4] Section 3, *id.*

[5] Section 4, *id.*

[6] Section 6, *id.*

officials and employees whose revenue collection falls short of the target; (3) terminate personnel in accordance with the criteria adopted by the Board; (4) prescribe a system for performance evaluation; (5) perform other functions, including the issuance of rules and regulations and (6) submit an annual report to Congress.[7]

The DOF, DBM, NEDA, BIR, BOC and the Civil Service Commission (CSC) were tasked to promulgate and issue the implementing rules and regulations of RA 9335,[8] to be approved by a Joint Congressional Oversight Committee created for such purpose.[9]

Petitioners, invoking their right as taxpayers filed this petition challenging the constitutionality of RA 9335, a tax reform legislation. They contend that, by establishing a system of rewards and incentives, the law "transform[s] the officials and employees of the BIR and the BOC into mercenaries and bounty hunters" as they will do their best only in consideration of such rewards. Thus, the system of rewards and incentives invites corruption and undermines the constitutionally mandated duty of these officials and employees to serve the people with utmost responsibility, integrity, loyalty and efficiency.

Petitioners also claim that limiting the scope of the system of rewards and incentives only to officials and employees of the BIR and the BOC violates the constitutional guarantee of equal protection. There is no valid basis for classification or distinction as to why such a system should not apply to officials and employees of all other government agencies.

In addition, petitioners assert that the law unduly delegates the power to fix revenue targets to the President as it lacks a sufficient standard on that matter. While Section 7(b) and (c) of RA 9335 provides that BIR and BOC officials may be dismissed from the service if their revenue collections fall short

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[7] Section 7, *id.*

[8] Section 11, *id.*

[9] Section 12, *id.*

of the target by at least 7.5%, the law does not, however, fix the revenue targets to be achieved. Instead, the fixing of revenue targets has been delegated to the President without sufficient standards. It will therefore be easy for the President to fix an unrealistic and unattainable target in order to dismiss BIR or BOC personnel.

Finally, petitioners assail the creation of a congressional oversight committee on the ground that it violates the doctrine of separation of powers. While the legislative function is deemed accomplished and completed upon the enactment and approval of the law, the creation of the congressional oversight committee permits legislative participation in the implementation and enforcement of the law.

In their comment, respondents, through the Office of the Solicitor General, question the petition for being premature as there is no actual case or controversy yet. Petitioners have not asserted any right or claim that will necessitate the exercise of this Court's jurisdiction. Nevertheless, respondents acknowledge that public policy requires the resolution of the constitutional issues involved in this case. They assert that the allegation that the reward system will breed mercenaries is mere speculation and does not suffice to invalidate the law. Seen in conjunction with the declared objective of RA 9335, the law validly classifies the BIR and the BOC because the functions they perform are distinct from those of the other government agencies and instrumentalities. Moreover, the law provides a sufficient standard that will guide the executive in the implementation of its provisions. Lastly, the creation of the congressional oversight committee under the law enhances, rather than violates, separation of powers. It ensures the fulfillment of the legislative policy and serves as a check to any over-accumulation of power on the part of the executive and the implementing agencies.

After a careful consideration of the conflicting contentions of the parties, the Court finds that petitioners have failed to overcome the presumption of constitutionality in favor of RA 9335, except as shall hereafter be discussed.

ACTUAL CASE AND RIPENESS

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication.[10] A closely related requirement is ripeness, that is, the question must be ripe for adjudication. And a constitutional question is ripe for adjudication when the governmental act being challenged has a direct adverse effect on the individual challenging it.[11] Thus, to be ripe for judicial adjudication, the petitioner must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision of the Court.[12]

In this case, aside from the general claim that the dispute has ripened into a judicial controversy by the mere enactment of the law even without any further overt act,[13] petitioners fail either to assert any specific and concrete legal claim or to demonstrate any direct adverse effect of the law on them. They are unable to show a personal stake in the outcome of this case or an injury to themselves. On this account, their petition is procedurally infirm.

This notwithstanding, public interest requires the resolution of the constitutional issues raised by petitioners. The grave nature of their allegations tends to cast a cloud on the presumption of constitutionality in favor of the law. And where an action of the legislative branch is alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.[14]

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[10] Cruz, Isagani, *PHILIPPINE CONSTITUTIONAL LAW*, 1995 edition, p. 23.

[11] Bernas, Joaquin, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1996 edition, pp. 848-849.

[12] *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904 (2000). (Vitug, *J.*, separate opinion)

[13] See *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 01 December 2004, 445 SCRA 1.

[14] *Tañada v. Angara*, 338 Phil. 546 (1997).

ACCOUNTABILITY OF PUBLIC OFFICERS

Section 1, Article 11 of the Constitution states:

Sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism, and justice, and lead modest lives.

Public office is a public trust. It must be discharged by its holder not for his own personal gain but for the benefit of the public for whom he holds it in trust. By demanding accountability and service with responsibility, integrity, loyalty, efficiency, patriotism and justice, all government officials and employees have the duty to be responsive to the needs of the people they are called upon to serve.

Public officers enjoy the presumption of regularity in the performance of their duties. This presumption necessarily obtains in favor of BIR and BOC officials and employees. RA 9335 operates on the basis thereof and reinforces it by providing a system of rewards and sanctions for the purpose of encouraging the officials and employees of the BIR and the BOC to exceed their revenue targets and optimize their revenue-generation capability and collection.[15]

The presumption is disputable but proof to the contrary is required to rebut it. It cannot be overturned by mere conjecture or denied in advance (as petitioners would have the Court do) specially in this case where it is an underlying principle to advance a declared public policy.

Petitioners' claim that the implementation of RA 9335 will turn BIR and BOC officials and employees into "bounty hunters and mercenaries" is not only without any factual and legal basis; it is also purely speculative.

A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a

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[15] Section 2, *id.*

clear and unequivocal breach of the Constitution, not a doubtful and equivocal one.[16] To invalidate RA 9335 based on petitioners' baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

Public service is its own reward. Nevertheless, public officers may by law be rewarded for exemplary and exceptional performance. A system of incentives for exceeding the set expectations of a public office is not anathema to the concept of public accountability. In fact, it recognizes and reinforces dedication to duty, industry, efficiency and loyalty to public service of deserving government personnel.

In *United States v. Matthews*,[17] the U.S. Supreme Court validated a law which awards to officers of the customs as well as other parties an amount not exceeding one-half of the net proceeds of forfeitures in violation of the laws against smuggling. Citing *Dorsheimer v. United States*,[18] the U.S. Supreme Court said:

> The offer of a portion of such penalties to the collectors is to stimulate and reward their zeal and industry in detecting fraudulent attempts to evade payment of duties and taxes.

In the same vein, employees of the BIR and the BOC may by law be entitled to a reward when, as a consequence of their zeal in the enforcement of tax and customs laws, they exceed their revenue targets. In addition, RA 9335 establishes safeguards to ensure that the reward will not be claimed if it will be either the fruit of "bounty hunting or mercenary activity" or the product of the irregular performance of official duties. One of these precautionary measures is embodied in Section 8 of the law:

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[16] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, 15 December 2004, 446 SCRA 299.

[17] 173 U.S. 381 (1899).

[18] 74 U.S. 166 (1868).

SEC. 8. *Liability of Officials, Examiners and Employees of the BIR and the BOC.* – The officials, examiners, and employees of the [BIR] and the [BOC] who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

EQUAL PROTECTION

Equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished.[19] When things or persons are different in fact or circumstance, they may be treated in law differently. In *Victoriano v. Elizalde Rope Workers' Union*,[20] this Court declared:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the [S]tate. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. **The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different**. **It does not prohibit legislation which is limited either in the object to which it is directed** or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars.

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[19] BLACK'S LAW DICTIONARY, SPECIAL DE LUXE 5th Edition, West, p. 481.

[20] 158 Phil. 60 (1974).

A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class**. This Court has held that **the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary**.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[21] (emphasis supplied)

The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary.[22] With respect to RA 9335, its expressed public policy is the optimization of the revenue-generation capability and collection of the BIR and the BOC.[23] Since the subject of the law is the revenue-generation capability and collection of the BIR and the BOC, the incentives and/or sanctions provided in the law should logically pertain to the said agencies. Moreover, the law concerns only the BIR and the BOC because they have the common distinct primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges.

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[21] *Id.* Citations omitted.

[22] *Ambros v. Commission on Audit*, G.R. No. 159700, 30 June 2005, 462 SCRA 572.

[23] Section 2, RA 9335.

The BIR performs the following functions:

Sec. 18. *The Bureau of Internal Revenue*. – The Bureau of Internal Revenue, which shall be headed by and subject to the supervision and control of the Commissioner of Internal Revenue, who shall be appointed by the President upon the recommendation of the Secretary [of the DOF], shall have the following functions:

(1) Assess and collect all taxes, fees and charges and account for all revenues collected;
(2) Exercise duly delegated police powers for the proper performance of its functions and duties;
(3) Prevent and prosecute tax evasions and all other illegal economic activities;
(4) Exercise supervision and control over its constituent and subordinate units; and
(5) Perform such other functions as may be provided by law.[24]
x x x x x x x x x (emphasis supplied)

On the other hand, the BOC has the following functions:

Sec. 23. *The Bureau of Customs*. – The Bureau of Customs which shall be headed and subject to the management and control of the Commissioner of Customs, who shall be appointed by the President upon the recommendation of the Secretary[of the DOF] and hereinafter referred to as Commissioner, shall have the following functions:

(1) Collect custom duties, taxes and the corresponding fees, charges and penalties;
(2) Account for all customs revenues collected;
(3) Exercise police authority for the enforcement of tariff and customs laws;
(4) Prevent and suppress smuggling, pilferage and all other economic frauds within all ports of entry;
(5) Supervise and control exports, imports, foreign mails and the clearance of vessels and aircrafts in all ports of entry;
(6) Administer all legal requirements that are appropriate;
(7) Prevent and prosecute smuggling and other illegal activities in

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[24] Section 18, Chapter 4, Title II, Book IV, Administrative Code of 1987.

all ports under its jurisdiction;
(8) Exercise supervision and control over its constituent units;
(9) Perform such other functions as may be provided by law.[25]
x x x x x x x x x (emphasis supplied)

Both the BIR and the BOC are bureaus under the DOF. They principally perform the special function of being the instrumentalities through which the State exercises one of its great inherent functions – taxation. Indubitably, such substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the BIR and the BOC under RA 9335 fully satisfy the demands of equal protection.

UNDUE DELEGATION

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate.[26] It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot.[27] To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[28]

RA 9335 adequately states the policy and standards to guide the President in fixing revenue targets and the implementing agencies in carrying out the provisions of the law. Section 2 spells out the policy of the law:

SEC. 2. *Declaration of Policy*. – It is the policy of the State to optimize the revenue-generation capability and collection of the Bureau of

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[25] Section 23, *id*.

[26] *Pelaez v. Auditor General*, 122 Phil. 965 (1965).

[27] *Eastern Shipping Lines, Inc. v. POEA*, G.R. No. 76633, 18 October 1988, 166 SCRA 533.

[28] Cruz, Isagani, *PHILIPPINE POLITICAL LAW*, 1991 edition, p. 97.

Internal Revenue (BIR) and the Bureau of Customs (BOC) by providing for a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue Performance Evaluation Board in the above agencies for the purpose of encouraging their officials and employees to exceed their revenue targets.

Section 4 "canalized within banks that keep it from overflowing"[29] the delegated power to the President to fix revenue targets:

SEC. 4. *Rewards and Incentives Fund*. – A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of **their respective revenue targets of the year, as determined by the Development Budget and Coordinating Committee (DBCC)**, in the following percentages:

Excess of Collection of the Excess the Revenue Targets	Percent (%) of the Excess Collection to Accrue to the Fund
30% or below	– 15%
More than 30%	– 15% of the first 30% plus 20% of the remaining excess

The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

Revenue targets shall refer to the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. The BIR and the BOC shall submit to the DBCC the distribution of the agencies' revenue targets as allocated among its revenue districts in the case of the BIR, and the collection districts in the case of the BOC.

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[29] *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), (Cardozo, *J.*, dissenting).

x x x x x x x x x (emphasis supplied)

Revenue targets are based on the original estimated revenue collection expected respectively of the BIR and the BOC for a given fiscal year as approved by the DBCC and stated in the BESF submitted by the President to Congress.[30] Thus, the determination of revenue targets does not rest solely on the President as it also undergoes the scrutiny of the DBCC.

On the other hand, Section 7 specifies the limits of the Board's authority and identifies the conditions under which officials and employees whose revenue collection falls short of the target by at least 7.5% may be removed from the service:

SEC. 7. *Powers and Functions of the Board.* – The Board in the agency shall have the following powers and functions:

x x x x x x x x x

(b) To set the criteria and procedures for **removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection** as provided in the rules and regulations promulgated under this Act, **subject to civil service laws, rules and regulations and compliance with substantive and procedural due process**: Provided, That the following exemptions shall apply:

1. Where the district or area of responsibility is newly-created, not exceeding two years in operation, as has no historical record of collection performance that can be used as basis for evaluation; and

2. Where the revenue or customs official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: Provided, however, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from economic

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[30] Section 5, Rule II, Implementing Rules and Regulations of RA 9335.

difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.

(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph: Provided, That such decision shall be immediately executory: Provided, further, That **the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the Anti-Graft and Corrupt Practices Act**;

x x x x x x x x x (emphasis supplied)

Clearly, RA 9335 in no way violates the security of tenure of officials and employees of the BIR and the BOC. The guarantee of security of tenure only means that an employee cannot be dismissed from the service for causes other than those provided by law and only after due process is accorded the employee.[31] In the case of RA 9335, it lays down a reasonable yardstick for removal (when the revenue collection falls short of the target by at least 7.5%) with due consideration of all relevant factors affecting the level of collection. This standard is analogous to inefficiency and incompetence in the performance of official duties, a ground for disciplinary action under civil service laws.[32] The action for removal is also subject to civil service laws, rules and regulations and compliance with substantive and procedural due process.

At any rate, this Court has recognized the following as sufficient standards: "public interest," "justice and equity," "public convenience and welfare" and "simplicity, economy and welfare."[33] In this case, the declared policy of optimization of

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[31] *De Guzman, Jr. v. Commission on Elections*, 391 Phil. 70 (2000).

[32] *See* Section 46(b)(8), Chapter 6, Title I, Subtitle A, Book V, Administrative Code of 1987.

[33] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, G.R. No. 152214, 19 September 2006, 502 SCRA 295.

the revenue-generation capability and collection of the BIR and the BOC is infused with public interest.

SEPARATION OF POWERS

Section 12 of RA 9335 provides:

> SEC. 12. *Joint Congressional Oversight Committee*. – There is hereby created a Joint Congressional Oversight Committee composed of seven Members from the Senate and seven Members from the House of Representatives. The Members from the Senate shall be appointed by the Senate President, with at least two senators representing the minority. The Members from the House of Representatives shall be appointed by the Speaker with at least two members representing the minority. After the Oversight Committee will have approved the implementing rules and regulations (IRR) it shall thereafter become *functus officio* and therefore cease to exist.

The Joint Congressional Oversight Committee in RA 9335 was created for the purpose of approving the implementing rules and regulations (IRR) formulated by the DOF, DBM, NEDA, BIR, BOC and CSC. On May 22, 2006, it approved the said IRR. From then on, it became *functus officio* and ceased to exist. Hence, the issue of its alleged encroachment on the executive function of implementing and enforcing the law may be considered moot and academic.

This notwithstanding, this might be as good a time as any for the Court to confront the issue of the constitutionality of the Joint Congressional Oversight Committee created under RA 9335 (or other similar laws for that matter).

The scholarly discourse of Mr. Justice (now Chief Justice) Puno on the concept of congressional oversight in *Macalintal v. Commission on Elections*[34] is illuminating:

> *Concept and bases of congressional oversight*

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[34] 453 Phil. 586 (2003). Mr. Justice (now Chief Justice) Puno's separate opinion was adopted as part of the *ponencia* in this case insofar as it related to the creation of and the powers given to the Joint Congressional Oversight Committee.

Broadly defined, **the power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the *implementation* of legislation it has enacted. Clearly, oversight concerns *post-enactment* measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (d) to assess executive conformity with the congressional perception of public interest.**

The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government.

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Over the years, Congress has invoked its oversight power with increased frequency to check the perceived "exponential accumulation of power" by the executive branch. By the beginning of the 20th century, Congress has delegated an enormous amount of legislative authority to the executive branch and the administrative agencies. Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

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Categories of congressional oversight functions

The acts done by Congress purportedly in the exercise of its oversight powers may be divided into *three* categories, namely: *scrutiny*, *investigation* and *supervision*.

a. Scrutiny

Congressional *scrutiny* implies a lesser intensity and continuity of attention to administrative operations. Its primary purpose is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request information and report from the other branches of government. It can give recommendations or pass resolutions for consideration of the agency involved.

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b. Congressional investigation

While congressional scrutiny is regarded as a passive process of looking at the facts that are readily available, *congressional investigation involves a more intense digging of facts*. The power of Congress to conduct investigation is recognized by the 1987 Constitution under Section 21, Article VI,

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c. Legislative supervision

The third and *most encompassing* form by which Congress exercises its oversight power is thru legislative supervision. "Supervision" connotes a continuing and informed awareness on the part of a congressional committee regarding *executive operations* in a given administrative area. While both congressional scrutiny and investigation involve inquiry into *past executive branch actions* in order to influence future executive branch performance, *congressional supervision allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority*.

Congress exercises supervision over the executive agencies through its veto power. It typically utilizes veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. These provisions require the President or an agency to present the proposed regulations to Congress, which retains a "right" to approve or disapprove any regulation before it takes effect. Such legislative veto provisions usually provide that a proposed regulation will become a law after the expiration of a certain period of time, only if Congress does not affirmatively disapprove of the regulation in the meantime. Less frequently, the statute provides that a proposed regulation will become law if Congress affirmatively approves it.

Supporters of legislative veto stress that it is necessary to maintain the balance of power between the legislative and the executive branches of government as it offers lawmakers a way to delegate vast power to the executive branch or to independent agencies while retaining the option to cancel particular exercise of such power without having to pass new legislation or to repeal existing law. They contend that this arrangement promotes democratic accountability as it provides legislative check on the activities of unelected administrative

agencies. One proponent thus explains:

> It is too late to debate the merits of this delegation policy: the policy is too deeply embedded in our law and practice. It suffices to say that the complexities of modern government have often led Congress-whether by actual or perceived necessity-to legislate by declaring broad policy goals and general statutory standards, leaving the choice of policy options to the discretion of an executive officer. Congress articulates legislative aims, but leaves their implementation to the judgment of parties who may or may not have participated in or agreed with the development of those aims. Consequently, absent safeguards, in many instances the reverse of our constitutional scheme could be effected: Congress proposes, the Executive disposes. One safeguard, of course, is the legislative power to enact new legislation or to change existing law. But without some means of overseeing post enactment activities of the executive branch, Congress would be unable to determine whether its policies have been implemented in accordance with legislative intent and thus whether legislative intervention is appropriate.

Its opponents, however, *criticize the legislative veto* as **undue encroachment upon the executive prerogatives**. They urge that **any post-enactment measures undertaken by the legislative branch should be limited to scrutiny and investigation; any measure beyond that would undermine the separation of powers guaranteed by the Constitution**. They contend that legislative veto constitutes an impermissible evasion of the President's veto authority and intrusion into the powers vested in the executive or judicial branches of government. Proponents counter that legislative veto enhances separation of powers as it prevents the executive branch and independent agencies from accumulating too much power. They submit that reporting requirements and congressional committee investigations allow Congress to scrutinize only the exercise of delegated law-making authority. They do not allow Congress to review executive proposals before they take effect and they do not afford the opportunity for ongoing and binding expressions of congressional intent. In contrast, legislative veto permits Congress to participate prospectively in the approval or disapproval of "*subordinate law*" or those enacted by the executive branch pursuant to a delegation of authority by Congress. They further argue that legislative veto "is a necessary response by Congress to the accretion of policy control by forces outside its chambers." In an era of delegated authority, they

point out that legislative veto "is the most efficient means Congress has yet devised to retain control over the evolution and implementation of its policy as declared by statute."

In *Immigration and Naturalization Service v. Chadha*, **the U.S. Supreme Court resolved the validity of legislative veto provisions**. The case arose from the order of the immigration judge suspending the deportation of Chadha pursuant to § 244(c)(1) of the Immigration and Nationality Act. The United States House of Representatives passed a resolution vetoing the suspension pursuant to § 244(c)(2) authorizing either House of Congress, by resolution, to invalidate the decision of the executive branch to allow a particular deportable alien to remain in the United States. The immigration judge reopened the deportation proceedings to implement the House order and the alien was ordered deported. The Board of Immigration Appeals dismissed the alien's appeal, holding that it had no power to declare unconstitutional an act of Congress. The United States Court of Appeals for Ninth Circuit held that the House was without constitutional authority to order the alien's deportation and that § 244(c)(2) violated the constitutional doctrine on separation of powers.

On appeal, the U.S. Supreme Court declared § 244(c)(2) unconstitutional. **But the Court shied away from the issue of separation of powers** and instead held that the provision violates the presentment clause and bicameralism. It held that the one-house veto was essentially legislative in purpose and effect. As such, it is subject to the procedures set out in Article I of the Constitution requiring the passage by a majority of both Houses and presentment to the President.

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Two weeks after the *Chadha* decision, the Court upheld, in memorandum decision, two lower court decisions invalidating the legislative veto provisions in the Natural Gas Policy Act of 1978 and the Federal Trade Commission Improvement Act of 1980. Following this precedence, lower courts invalidated statutes containing legislative veto provisions although some of these provisions required the approval of both Houses of Congress and thus met the bicameralism requirement of Article I. Indeed, some of these veto provisions were not even exercised.[35] (emphasis supplied)

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[35] *Id.* (italics in the original)

In *Macalintal*, given the concept and configuration of the power of congressional oversight and considering the nature and powers of a constitutional body like the Commission on Elections, the Court struck down the provision in RA 9189 (The Overseas Absentee Voting Act of 2003) creating a Joint Congressional Committee. The committee was tasked not only to monitor and evaluate the implementation of the said law but also to review, revise, amend and approve the IRR promulgated by the Commission on Elections. The Court held that these functions infringed on the constitutional independence of the Commission on Elections.[36]

With this backdrop, it is clear that congressional oversight is not unconstitutional *per se*, meaning, it neither necessarily constitutes an encroachment on the executive power to implement laws nor undermines the constitutional separation of powers. Rather, it is integral to the checks and balances inherent in a democratic system of government. It may in fact even enhance the separation of powers as it prevents the over-accumulation of power in the executive branch.

However, to forestall the danger of congressional encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on Congress.[37] It may not vest itself, any of its committees or its members with either executive or judicial power.[38] And, when it exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified under the Constitution,[39] including the procedure for enactment of laws and presentment.

Thus, any post-enactment congressional measure such as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

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[36] *Id.*

[37] *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

[38] *Id.*

[39] *Id.*

(1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation[40] and

(2) investigation and monitoring[41] of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[42]

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. Legislative vetoes fall in this class.

Legislative veto is a statutory provision requiring the President or an administrative agency to present the proposed implementing rules and regulations of a law to Congress which, by itself or through a committee formed by it, retains a "right" or "power" to approve or disapprove such regulations before they take effect. As such, a legislative veto in the form of a congressional oversight committee is in the form of an inward-turning delegation designed to attach a congressional leash (other than through scrutiny and investigation) to an agency to which Congress has by law initially delegated broad powers.[43] It radically changes the design or structure of the Constitution's diagram of power as it entrusts to Congress a direct role in enforcing, applying or implementing its own laws.[44]

Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative

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[40] See Mr. Justice (now Chief Justice) Puno's separate opinion in *Macalintal*.

[41] *E.g.*, by requiring the regular submission of reports.

[42] See Mr. Justice (now Chief Justice) Puno's separate opinion in *Macalintal.*

[43] See Tribe, Lawrence, *I American Constitutional Law 131* (2000).

[44] *Id.*

competence.[45] It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards.[46] In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature.[47] Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).[48]

Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect.[49] Such rules and regulations partake of the nature of a statute[50] and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[51] Congress, in the guise of assuming the role of an overseer, may not pass upon their legality by subjecting them to its stamp of approval without disturbing the calculated balance of powers established by the Constitution. In exercising discretion to approve or disapprove the IRR based on a determination of whether or

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[45] *Id.* at 141.

[46] *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Airport Noise*, *supra*.

[47] *Edu v. Ericta*, 146 Phil. 469 (1970).

[48] Bernas, Joaquin, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: *A COMMENTARY*, 2003 edition, p. 664 citing *Wayman v. Southward*, 10 Wheat 1 (1852) and *The Brig Aurora*, 7 Cr. 382 (1813).

[49] *Eslao v. Commission on Audit*, G.R. No. 108310, 01 September 1994, 236 SCRA 161; *Sierra Madre Trust v. Secretary of Agriculture and Natural Resources*, 206 Phil. 310 (1983).

[50] *People v. Maceren*, 169 Phil. 437 (1977).

[51] See *Eslao v. Commission on Audit*, *supra*.

not they conformed with the provisions of RA 9335, Congress arrogated judicial power unto itself, a power exclusively vested in this Court by the Constitution.

CONSIDERED OPINION OF MR. JUSTICE DANTE O. TINGA

Moreover, the requirement that the implementing rules of a law be subjected to approval by Congress as a condition for their effectivity violates the cardinal constitutional principles of bicameralism and the rule on presentment.[52]

Section 1, Article VI of the Constitution states:

> Section 1. **The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives**, except to the extent reserved to the people by the provision on initiative and referendum. (emphasis supplied)

Legislative power (or the power to propose, enact, amend and repeal laws)[53] is vested in Congress which consists of two chambers, the Senate and the House of Representatives. A valid exercise of legislative power requires the act of both chambers. Corrollarily, it can be exercised neither solely by one of the two chambers nor by a committee of either or both chambers. Thus, assuming the validity of a legislative veto, both a single-chamber legislative veto and a congressional committee legislative veto are invalid.

Additionally, Section 27(1), Article VI of the Constitution provides:

> Section 27. (1) **Every bill passed by the Congress shall, before it becomes a law, be presented to the President**. If he approves the same, he shall sign it, otherwise, he shall veto it and return the same

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[52] It is also for these reasons that the United States Supreme Court struck down legislative vetoes as unconstitutional in *Immigration and Naturalization Service v. Chadha* (462 U.S. 919 [1983]).

[53] Nachura, Antonio B., *OUTLINE REVIEWER IN POLITICAL LAW*, 2006 edition, p. 236.

with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by *yeas* or *nays*, and the names of the members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it. (emphasis supplied)

Every bill passed by Congress must be presented to the President for approval or veto. In the absence of presentment to the President, no bill passed by Congress can become a law. In this sense, law-making under the Constitution is a joint act of the Legislature and of the Executive. Assuming that legislative veto is a valid legislative act with the force of law, it cannot take effect without such presentment even if approved by both chambers of Congress.

In sum, two steps are required before a bill becomes a law. First, it must be approved by both Houses of Congress.[54] Second, it must be presented to and approved by the President.[55] As

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[54] Section 26, Article VI of the Constitution provides:

Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal.

[55] See Bernas, *supra* note 48, p. 762.

summarized by Justice Isagani Cruz [56] and Fr. Joaquin G. Bernas, S.J.[57], the following is the procedure for the approval of bills:

A bill is introduced by any member of the House of Representatives or the Senate except for some measures that must originate only in the former chamber.

The first reading involves only a reading of the number and title of the measure and its referral by the Senate President or the Speaker to the proper committee for study.

The bill may be "killed" in the committee or it may be recommended for approval, with or without amendments, sometimes after public hearings are first held thereon. If there are other bills of the same nature or purpose, they may all be consolidated into one bill under common authorship or as a committee bill.

Once reported out, the bill shall be calendared for second reading. It is at this stage that the bill is read in its entirety, scrutinized, debated upon and amended when desired. The second reading is the most important stage in the passage of a bill.

The bill as approved on second reading is printed in its final form and copies thereof are distributed at least three days before the third reading. On the third reading, the members merely register their votes and explain them if they are allowed by the rules. No further debate is allowed.

Once the bill passes third reading, it is sent to the other chamber, where it will also undergo the three readings. If there are differences between the versions approved by the two chambers, a conference committee[58] representing both Houses will draft a compromise measure

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[56] PHILIPPINE POLITICAL LAW, 2002 edition, Central Lawbook Publishing Co., Inc., pp. 152-153.

[57] THE PHILIPPINE CONSTITUTION FOR LADIES, GENTLEMEN AND OTHERS, 2007 edition, Rex Bookstore, Inc., pp. 118-119.

[58] The conference committee consists of members nominated by both Houses. The task of the conference committee, however, is not strictly limited to reconciling differences. Jurisprudence also allows the committee to insert new provision[s] not found in either original provided these are germane to the subject of the bill. Next, the reconciled version must be presented to both Houses for ratification. (*Id.*)

that if ratified by the Senate and the House of Representatives will then be submitted to the President for his consideration.

The bill is enrolled when printed as finally approved by the Congress, thereafter authenticated with the signatures of the Senate President, the Speaker, and the Secretaries of their respective chambers…[59]

The President's role in law-making.

The final step is submission to the President for approval. Once approved, it takes effect as law after the required publication.[60]

Where Congress delegates the formulation of rules to implement the law it has enacted pursuant to sufficient standards established in the said law, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. And it may be deemed to have left the hands of the legislature when it becomes effective because it is only upon effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Subject to the indispensable requisite of publication under the due process clause,[61] the determination as to when a law takes effect is wholly the prerogative of Congress.[62] As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law.

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[59] *Supra* note 56.

[60] *Supra* note 57.

[61] See Section 1, Article III of the Constitution. In *Tañada v. Tuvera* (230 Phil. 528), the Court also cited Section 6, Article III which recognizes "the right of the people to information on matters of public concern."

[62] As much is recognized in Article 2 of the Civil Code which states that "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." *Tañada* recognized that "unless it is otherwise provided" referred to the date of effectivity. Simply put, a law which is silent as to its effectivity date takes effect fifteen days following publication, though there is no impediment for Congress to provide for a different effectivity date.

Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.[63]

[63] It has been suggested by Mr. Justice Antonio T. Carpio that Section 12 of RA 9335 is likewise unconstitutional because it violates the principle of separation of powers, particularly with respect to the executive and the legislative branches. Implicit in this claim is the proposition that the ability of the President to promulgate implementing rules to legislation is inherent in the executive branch.

There has long been a trend towards the delegation of powers, especially of legislative powers, even if not expressly permitted by the Constitution. (I. Cortes, *Administrative Law*, at 12-13.) Delegation of legislative powers is permissible unless the delegation amounts to a surrender or abdication of powers. (*Id.*) Recent instances of delegated legislative powers upheld by the Court include the power of the Departments of Justice and Health to promulgate rules and regulations on lethal injection (*Echegaray v. Secretary of Justice*, 358 Phil. 410 [1998]); the power of the Secretary of Health to phase out blood banks (*Beltran v. Secretary of Health*, G.R. No. 133640, 133661, & 139147, 25 November 2005, 476 SCRA 168); and the power of the Departments of Finance and Labor to promulgate Implementing Rules to the Migrant Workers and Overseas Filipinos Act. (*Equi-Asia Placement v. DFA*, G.R. No. 152214, 19 September 2006, 502 SCRA 295.)

The delegation to the executive branch of the power to formulate and enact implementing rules falls within the class of permissible delegation of legislative powers. Most recently, in *Executive Secretary v. Southwing Heavy Industries* (G.R. Nos. 164171, 164172 &168741, 20 February 2006, 482 SCRA 673), we characterized such delegation as "confer[ring] upon the President quasi-legislative power which may be defined as the **authority delegated by the law-making body to the administrative body to adopt rules and regulations** intended to carry out the provisions of the law and implement legislative policy." (*Id.*, at 686, citing Cruz, Philippine *Administrative Law*, 2003 Edition, at 24.) Law book authors are likewise virtually unanimous that the power of the executive branch to promulgate implementing rules arises from legislative delegation. Justice Nachura defines the nature of the rule-making power of administrative bodies in the executive branch as "**the exercise of delegated legislative power**, involving no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself." (A.E. Nachura, *Outline Reviewer in Political Law* [2000 ed.], at 272.) He further explains that rules and regulations that "fix the details in the execution and enforcement of a policy set out in the law" are called "supplementary or detailed legislation". (*Id.*, at 273.) Other commentators such as Fr. Bernas (Bernas, *supra* note 48, at 611), De Leon and De Leon (H. De Leon & H. De Leon, Jr., *Administrative Law: Text and Cases* (1998 ed), at 79-80; citing 1 Am. Jur. 2d 891) and Carlos Cruz (C. Cruz, *Philippine Administrative Law* (1998 ed), at 19-20, 22, 23) have similar views.

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play

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The Congress may delegate the power to craft implementing rules to the President in his capacity as the head of the executive branch, which is tasked under the Constitution to execute the law. In effecting this delegation, and as with any other delegation of legislative powers, Congress may impose conditions or limitations which the executive branch is bound to observe. A usual example is the designation by Congress of which particular members of the executive branch should participate in the drafting of the implementing rules. This set-up does not offend the separation of powers between the branches as it is sanctioned by the delegation principle.

Apart from whatever rule-making power that Congress may delegate to the President, the latter has inherent ordinance powers covering the executive branch as part of the power of executive control ("The President shall have control of all the executive departments, bureaus and offices…" Section 17, Article VII, Constitution.). By its nature, this ordinance power does not require or entail delegation from Congress. Such faculty must be distinguished from the authority to issue implementing rules to legislation which does not inhere in the presidency but instead, as explained earlier, is delegated by Congress.

The marked distinction between the President's power to issue intrabranch orders and instructions or internal rules for the executive branch, on one hand, and the President's authority by virtue of legislative delegation to issue implementing rules to legislation, on the other, is embodied in the rules on publication, as explained in *Tañada v. Tuvera* (G.R. No. 63915, 29 December 1986, 146 SCRA 446). The Court held therein that internal regulations applicable to members of the executive branch, "that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties." (*Id., at* 454) The dispensation with publication in such instances is rooted in the very nature of the issuances, *i.e.*, they are not binding on the public. They neither create rights nor impose obligations which are enforceable in court. Since they are issued pursuant to the power of executive control, and are directed only at members of the executive branch, there is no constitutional need for their publication.

However, when the presidential issuance does create rights and obligations affecting the public at large, as implementing rules certainly do, then publication is mandatory. In explaining why this is so, the Court went as far as to note that such rules and regulations are designed "to enforce or implement existing law **pursuant to a valid delegation.**" (*Id.*, at 254.) **The Court would not have spoken of "valid delegation" if indeed the power to issue such rules was inherent in the presidency.** Moreover,

any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.

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the creation of legal rights and obligations is legislative in character, and the President in whom legislative power does not reside cannot confer legal rights or impose obligations on the people absent the proper empowering statute. Thus, any presidential issuance which purports to bear such legal effect on the public, such as implementing rules to legislation, can only emanate from a legislative delegation to the President.

The prevalent practice in the Office of the President is to issue orders or instructions to officials of the executive branch regarding the enforcement or carrying out of the law. This practice is valid conformably with the President's power of executive control. The faculty to issue such orders or instructions is distinct from the power to promulgate implementing rules to legislation. The latter originates from a different legal foundation – the delegation of legislative power to the President.

Justice Carpio cites an unconventional interpretation of the ordinance power of the President, particularly the power to issue executive orders, as set forth in the Administrative Code of 1987. Yet, by practice, implementing rules are never contained in executive orders. They are, instead, contained in a segregate promulgation, usually entitled "Implementing Rules and Regulations," which derives not from the Administrative Code, but rather from the specific grants in the legislation itself sought to be implemented.

His position does not find textual support in the Administrative Code itself. Section 2, Chapter 2, Title 1, Book III of the Code, which defines "Executive orders" as "[a]cts of the President providing for rules of a general or permanent character **in the implementation or execution of constitutional or statutory powers.**" Executive orders are not the vehicles for rules of a general or permanent character in the **implementation or execution of laws**. They are the vehicle for rules of a general or permanent character in the **implementation or execution of the constitutional or statutory powers of the President** himself. Since by definition, the statutory powers of the President consist of a specific delegation by Congress, it necessarily follows that the faculty to issue executive orders to implement such delegated authority emanates not from any inherent executive power but from the authority delegated by Congress.

It is not correct, as Justice Carpio posits, that without implementing rules, legislation cannot be faithfully executed by the executive branch. Many of our key laws, including the Civil Code, the Revised Penal Code, the Corporation Code, the Land Registration Act and the Property Registration Decree, do not have Implementing Rules. It has never been suggested that the enforcement of these laws is unavailing, or that the absence of implementing rules to these laws indicates insufficient statutory details

Under this principle, a provision that requires Congress or its members to approve the implementing rules of a law after it has already taken effect shall be unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by the members of the executive branch charged with the implementation of the law.

Following this rationale, Section 12 of RA 9335 should be struck down as unconstitutional. While there may be similar provisions of other laws that may be invalidated for failure to pass this standard, the Court refrains from invalidating them wholesale but will do so at the proper time when an appropriate case assailing those provisions is brought before us.[64]

The next question to be resolved is: what is the effect of the unconstitutionality of Section 12 of RA 9335 on the other provisions of the law? Will it render the entire law unconstitutional? No.

Section 13 of RA 9335 provides:

SEC. 13. *Separability Clause*. – If any provision of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

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that should preclude their enforcement. (See *DBM v. Kolonwel Trading*, G.R. Nos. 175608, 175616 & 175659, 8 June 2007, 524 SCRA 591, 603.)

In rejecting the theory that the power to craft implementing rules is executive in character and reaffirming instead that such power arises from a legislative grant, the Court asserts that Congress retains the power to impose statutory conditions in the drafting of implementing rules, provided that such conditions do not take on the character of a legislative veto. Congress can designate which officers or entities should participate in the drafting of implementing rules. It may impose statutory restraints on the participants in the drafting of implementing rules, and the President is obliged to observe such restraints on the executive officials, even if he thinks they are unnecessary or foolhardy. The unconstitutional nature of the legislative veto does not however bar Congress from imposing conditions which the President must comply with in the execution of the law. After all, the President has the constitutional duty to faithfully execute the laws.

[64] This stance is called for by judicial restraint as well as the presumption of constitutionality accorded to laws enacted by Congress, a co-equal branch. It is also finds support in *Pelaez v. Auditor General* (122 Phil. 965 [1965]).

In *Tatad v. Secretary of the Department of Energy*,[65] the Court laid down the following rules:

> The *general rule* is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x
>
> The *exception to the general rule* is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them.

The separability clause of RA 9335 reveals the intention of the legislature to isolate and detach any invalid provision from the other provisions so that the latter may continue in force and effect. The valid portions can stand independently of the invalid section. Without Section 12, the remaining provisions still constitute a complete, intelligible and valid law which carries out the legislative intent to optimize the revenue-generation capability and collection of the BIR and the BOC by providing for a system of rewards and sanctions through the Rewards and Incentives Fund and a Revenue Performance Evaluation Board.

To be effective, administrative rules and regulations must be published in full if their purpose is to enforce or implement

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[65] 346 Phil. 321 (1997). Emphasis in the original.

existing law pursuant to a valid delegation. The IRR of RA 9335 were published on May 30, 2006 in two newspapers of general circulation[66] and became effective 15 days thereafter.[67] Until and unless the contrary is shown, the IRR are presumed valid and effective even without the approval of the Joint Congressional Oversight Committee.

WHEREFORE, the petition is hereby *PARTIALLY GRANTED.* Section 12 of RA 9335 creating a Joint Congressional Oversight Committee to approve the implementing rules and regulations of the law is declared *UNCONSTITUTIONAL* and therefore *NULL* and *VOID.* The constitutionality of the remaining provisions of RA 9335 is *UPHELD.* Pursuant to Section 13 of RA 9335, the rest of the provisions remain in force and effect.

SO ORDERED.

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

Carpio, J., see separate concurring opinion.

Tinga, J., see concurring opinion.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

I concur with the majority opinion penned by Justice Renato C. Corona. However, I wish to explain further why the last sentence in Section 12 of Republic Act No. 9335 (RA 9335), requiring the congressional oversight committee to approve the implementing rules and regulations of RA 9335, is unconstitutional.

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[66] In particular, the Philippine Star and the Manila Standard.

[67] Section 36, IRR of RA 9335.

There are three compelling grounds why the approval requirement in Section 12 is unconstitutional. *First*, the approval requirement violates the separation of powers among the Legislature, Executive and Judiciary. *Second*, the approval requirement involves the delegation to a congressional oversight committee of the power to enact laws that only the full two chambers of Congress can exercise. *Third*, the approval requirement violates the constitutional provision that bills enacted into law by Congress be presented to the President for approval or veto.

Section 12 of RA 9335 creates a joint congressional oversight committee (Oversight Committee) with the **power to approve the implementing rules and regulations (IRR) of RA 9335**. Section 12 states:

> Section 12. *Joint Congressional Oversight Committee*. - There is hereby created a Joint Oversight Committee composed of seven Members from the Senate and seven Members from the House of Representatives. The Members from the Senate shall be appointed by the Senate President, with at least two senators representing the minority. The Members from the House of Representatives shall be appointed by the Speaker with at least two members representing the minority. **After the Oversight Committee will have approved the implementing rules and regulations (IRR) it shall thereafter become *functus officio* and therefore cease to exist**. (Emphasis supplied)

Under Section 32 of RA 9335, the Department of Finance, Department of Budget and Management, National Economic and Development Authority, Bureau of Internal Revenue, Bureau of Customs, and the Civil Service Commission shall jointly draft the IRR. **The IRR cannot take effect without the approval of the Oversight Committee**.

Implementation of the law is indisputably an Executive function. To implement the law, the Executive must necessarily adopt *implementing rules* to guide executive officials how to implement the law, as well as to guide the public how to comply with the law. These guidelines, known as implementing rules and regulations, can only emanate from the Executive because the Executive is vested with the power to implement the law.

Implementing rules and regulations are the means and methods on how the Executive will execute the law after the Legislature has enacted the law.

The Executive cannot implement the law without adopting implementing rules and regulations. The power of the Executive to implement the law necessarily includes all power "**necessary and proper**"[1] to implement the law, including the power to adopt implementing rules and regulations. The grant of executive power to the President in the Constitution is a grant of all executive power.[2] The power to adopt implementing rules is thus ***inherent*** in the power to implement the law. The power to adopt implementing rules and regulations is law-execution, not law-making.[3] Within the sphere of its constitutional mandate to execute the law, the Executive possesses the power to adopt implementing rules to carry out its Executive function. This applies also to the Judiciary, which also possesses the inherent power to adopt rules to carry out its Judicial function.

The Constitution mandates the President to "ensure that the laws be faithfully executed."[4] Without the power to adopt implementing rules and regulations, the Executive cannot ensure the faithful execution of the law. Obviously, the President

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[1] *Marcos v. Manglapus*, G.R. No. 88211, 15 September 1989, 177 SCRA 668, and 27 October 1989, 178 SCRA 760. In resolving the motion for reconsideration, the Court cited *Myers v. United States* (272 U.S. 52 [1926]) where Chief Justice William H. Taft (a former U.S. President and Governor-General of the Philippines), writing for the majority, ruled: "The true view of the Executive function is x x x that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power **or justly implied and included within such express grant as necessary and proper for its exercise**." The principle that power can be implied if "**necessary and proper**" to carry out a power expressly granted in the Constitution is now a well-settled doctrine.

[2] *Ibid.* Section 1, Article VII of the Constitution provides: "The executive power shall be vested in the President of the Philippines."

[3] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: A COMMENTARY, 612 (1996).

[4] Section 17, Article VII, Constitution.

cannot personally execute the law but must rely on subordinate executive officials. The President is inutile without the power to prescribe rules on how subordinate executive officials should execute the law.

Thus, the President must necessarily give instructions to subordinate executive officials and the public – in the form of implementing rules and regulations – on how the law should be executed by subordinate officials and complied with by the public. If the Legislature can withhold from the Executive this power to adopt implementing rules and regulations in the execution of the law, the Executive is made subordinate to the Legislature, not its separate, co-ordinate and co-equal branch in Government.

The inherent power of the Executive to adopt rules and regulations to execute or implement the law is different from the delegated legislative power to prescribe rules. The inherent power of the Executive to adopt rules to execute the law does not require any legislative standards for its exercise while the delegated legislative power requires sufficient legislative standards for its exercise.[5]

For example, Congress can delegate to the President the inherently legislative power to fix tariff rates. However, the President can exercise this delegated legislative power only within "specified limits"[6] prescribed by Congress. The "specified limits" and other limitations prescribed by Congress are the standards that the President must comply in exercising the delegated legislative power. Once the President complies with the legislative standards in fixing the tariff rates, he has fully exercised the delegated legislative power. This does not prevent, however, the President from adopting rules to execute or implement the delegated legislative power that he has fully exercised. These implementing rules are adopted by the President pursuant to the inherent power of the Executive to execute the law.

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[5] *Cervantes v. Auditor General*, 91 Phil. 359 (1952).

[6] Section 28(2), Article VI, Constitution.

There are laws that expressly provide for the Executive or its agencies to adopt implementing rules. There are also laws that are silent on this matter. It does not mean that laws expressly providing for the issuance of implementing rules automatically delegate legislative powers to the Executive. While providing for the issuance of implementing rules, the law may not actually delegate any legislative power for the issuance of such rules. It does not also mean that laws silent on the issuance of implementing rules automatically prevent the Executive from adopting implementing rules. If the law is silent, the necessary implementing rules may still be issued pursuant to the President's inherent rule-making power to execute the law.

Whether the rule-making power by the Executive is a delegated legislative power or an inherent Executive power depends on the nature of the rule-making power involved. If the rule-making power is inherently a legislative power, such as the power to fix tariff rates, the rule-making power of the Executive is a delegated legislative power. In such event, the delegated power can be exercised only if sufficient standards are prescribed in the law delegating the power.

If the rules are issued by the President in implementation or execution of self-executory constitutional powers vested in the President, the rule-making power of the President is not a delegated legislative power. **The most important self-executory constitutional power of the President is the President's constitutional duty and mandate to "ensure that the laws be faithfully executed."** The rule is that the President can execute the law without any delegation of power from the legislature. Otherwise, the President becomes a mere figure-head and not the sole Executive of the Government.

Only if the law is incomplete, as when there are details to be filled in by the Executive under specified legislative standards before the law can be implemented, is the issuance of rules by the Executive anchored on the delegation of legislative power. Once the law is complete, that is, the Executive has issued the rules filling in the details of the law, the Executive may still

issue rules to execute the complete law based now on the Executive's inherent power to execute the law.

Thus, Chapter 2, Title 1, Book III of the Administrative Code of 1987, on the **Ordinance Power of the Executive**, provides:

Chapter 2 - Ordinance Power

Section 2. Executive Orders. — Acts of the President providing for **rules of a general or permanent character in implementation or execution of constitutional or statutory** powers shall be promulgated in *executive orders*.

Section 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operations in pursuance of his duties as administrative head shall be promulgated in *administrative orders*.

Section 4. Proclamations. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in *proclamations* which shall have the force of an executive order.

Section 5. Memorandum Orders. — Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in *memorandum orders*.

Section 6. Memorandum Circulars. — Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in *memorandum circulars*. (Emphasis supplied; italicization in the original)

SECTION 7. General or Special Orders. — Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as *general or special orders*. (Emphasis supplied; italicization in the original)

These provisions of the Revised Administrative Code do not grant, but merely recognize the President's Ordinance Power and enjoin that such power shall be promulgated according to certain nomenclatures. The President's Ordinance Power is

the Executive's rule-making authority in implementing or executing constitutional or statutory powers. ***Indisputably, there are constitutional powers vested in the Executive that are self-executory***. The President may issue "rules of a general or permanent character in implementation or execution" of such *self-executory constitutional powers*. The power to issue such rules is inherent in Executive power. Otherwise, the President cannot execute self-executory constitutional provisions without a grant of delegated power from the Legislature, a legal and constitutional absurdity.

The President may even delegate to subordinate executive officials the President's inherent executive power to issue rules and regulations. Thus, pursuant to the President's self-executory power to implement the laws, the President has issued Executive and Administrative orders authorizing subordinate executive officials to issue implementing rules and regulations without reference to any legislative grant to do so, as follows:

1. Administrative Order No. 175 dated 2 April 2007 on *Strengthening the Powers of the Secretary of Justice over the Bureau of Immigration*, Section 3 of which provides:

   Section 3. Implementing Rules and Regulations. – The Secretary of Justice shall issue the Implementing Rules and Regulations covering this Administrative Order.

2. Executive Order No. 269 dated 12 January 2004 on *Creating the Commission on Information and Communications Technology* in the Office of the President, Section 8 of which provides:

   Section 8. Implementing Rules and Regulations. — The Chairman shall promulgate and issue such rules, regulations and other issuances within 60 days from the approval of this Executive Order as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

3. Administrative Order No. 402 dated 2 June 1998 on the *Establishment of a Medical Check-Up Program for Government Personnel*, Section 6 of which provides:

> Section 6. Implementing Rules and Regulations. — The DOH, Department of Budget and Management (DBM) and the PHIC shall jointly formulate and issue the implementing rules and regulations for this program.

4. Administrative Order No. 357 dated 21 August 1997 on the *Creation of the Civil Aviation Consultative Council*, Section 6 of which provides:

> Section 6. Implementing Rules and Regulations. — The Council shall immediately formulate and adopt the necessary implementing rules and regulations for the effective and efficient implementation of the provisions of this Order.

5. Executive Order No. 396 dated 30 January 1997 *Providing the Institutional Framework for the Administration of the Standards of Training, Certification and Watchkeeping for Seafarers in the Philippines*, Section 4 of which provides:

> Section 4. Implementing Rules and Regulations. — The STCW Executive Committee shall immediately convene to prepare and approve the Implementing Rules and Regulations for the effective implementation of this Order.

6. Administrative Order No. 296 dated 11 October 1996 on the *Establishment of Customs Clearance Areas in Special Economic and/or Freeport Zones*, Section 3 of which provides:

> Section 3. Implementing Rules and Regulations. — The BOC shall issue the necessary implementing rules and regulations for the operational procedures of the CCA, in consultation with the Zone authorities and concerned agencies.

7. Executive Order No. 309 dated 11 November 1987 *Reorganizing the Peace and Order Council*, Section 5 of which provides:

> Section 5. Implementing Rules and Regulations. — The National Peace and Order Council shall issue appropriate implementing rules and regulations to carry out this Order.

To hold that the President has no inherent power to issue implementing rules and regulations in the exercise of the power to execute the laws will result in the mass invalidation of the foregoing Executive and Administrative Orders, and many more with similar provisions. This will cripple the President's self-executory power to execute the laws and render the President inutile.

In the present case, Section 11 of RA 9335, the provision dealing on the issuance of the rules and regulations of RA 9335, states:

> Section 11. *Rules and Regulations*. The DOF, DBM, NEDA, BIR, BOC and CSC shall jointly issue the rules and regulations of this Act within thirty days after its effectivity.

There is nothing in Section 11 of RA 9335 that delegates to the named agencies any legislative power. There are also no legislative standards prescribed in Section 11 or in other provisions of RA 9335 governing the issuance of the rules and regulations of RA 9335. Section 11 merely provides that the named agencies "shall jointly issue the rules and regulations" of RA 9335. Thus, Section 11 of RA 9335 cannot be construed as a delegation of legislative power.

On the other hand, Section 7(a) of RA 9335 delegates to the Revenue Performance and Evaluation Board (Board) the power to prescribe rules and regulations, as follows:

> Section 7. *Powers and Functions of the Board*. The Board in the agency shall have the following powers and functions:
>
> (a) To prescribe the rules and regulations for the allocation, distribution and release of the Fund due to the agency **as provided for in Section 4 and 5 of this Act:** *Provided*, That the rewards under this Act may also take the form of non-monetary benefits;
>
> x x x. (Emphasis supplied)

Section 7(a) of RA 9335 is a delegation of legislative power to the Board in two agencies, the Bureau of Internal Revenue

and the Bureau of Customs. The specified standards for the Board's exercise of the delegated legislative power are found in Sections 4 and 5[7] of RA 9335 as stated in Section 7(a).

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[7] SECTION 4. *Rewards and Incentives Fund*. — A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of their respective revenue targets of the year, as determined by the Development Budget and Coordinating Committee (DBCC), in the following percentages:

Excess of Collection Over the Revenue Targets	Percent (%) of the Excess Collection to Accrue to the Fund
30% or below	5%
More than 30%	15% of the first 30% plus 20% of the remaining excess.

The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

Revenue targets shall refer to the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. The BIR and the BOC shall submit to the DBCC the distribution of the agencies revenue targets as allocated among its revenue districts in the case of the BIR, and the collection districts in the case of the BOC.

Any incentive under this Section shall be apportioned among the various units, official and employees of the BOC or the BIR, as the case may be, in proportion to their relative contribution to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the two bureaus respectively.

The Fund shall be allocated, distributed or released by the Revenue Performance Evaluation Board in each agency, hereinafter created in Section 6 of this Act, in accordance with the rules and regulations issued by the same.

SECTION 5. *Incentives to District Collection Offices*. — In the event that the BIR or the BOC fails to meet its revenue target by less than ten (10%), the revenue districts, in the case of the BIR, or the collection districts, in the case of the BOC, which exceed their respective allocations of the revenue target (allocated target), shall be entitled to rewards and incentives (district incentive) amounting to ten percent (10%) of the excess over its allocated target: Provided, however, That the BIR revenue district or BOC collection office which deliberately foregoes any revenue collection in a

However, the Board in Section 7(a) of RA 9335 is **different** from the agencies in Section 11 of RA 9335 that will issue the rules and regulations of RA 9335. First, the members of the Board are different from the agencies named in Section 11. Second, the functions of the Board are different from the functions of the agencies named in Section 11. Third, RA 9335 does not require the rules and regulations issued by the Board to be approved by the Oversight Committee.

Indeed, RA 9335 is an example of a law that contains a delegation of legislative power to prescribe rules based on specified legislative standards. This is exemplified by Section 7(a). RA 9335 is also an example of a law that recognizes the inherent power of the Executive to issue implementing rules and regulations to execute the law, which becomes complete after the delegated power in Section 7(a) is exercised by the Board. This is exemplified by Section 11.

In any event, whether the rules are issued by Executive agencies pursuant to a delegated legislative power or pursuant to the Executive's inherent power to execute the law, the result is the same: the Legislature cannot approve or disapprove such rules and regulations promulgated by executive agencies. The adoption of such rules and regulations is purely an Executive function, whether pursuant to a delegated legislative power or pursuant to the Executive's inherent power.

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given year as part of a scheme to avoid a higher allocated target for the subsequent year shall not be entitled to a district incentive in such subsequent year notwithstanding its having exceeded its allocated target: Provided, further, That the allocated target of any such district shall have been reported to and validated by the DBCC as required in the immediately preceding section.

The district reward shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released in the same fiscal year.

The allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Revenue Performance Evaluation Board.

The delegated legislative power, often referred to as regulatory power of executive agencies, is not inherently an Executive power. However, once delegated in a law, the exercise of the delegated legislative power becomes a purely Executive function. The Legislature cannot interfere in such function except through another law.

The well-entrenched rule is that Legislative officers cannot exercise Executive functions. A law that invests Executive functions on Legislative officers is unconstitutional for violation of the separation of powers. In *Springer v. Government of the Philippine Islands*,[8] the U.S. Supreme Court held:

> Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions. x x x.
>
> Not having the power of appointment, unless expressly granted or incidental to its powers, the Legislature cannot ingraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection, though the case might be different if the additional duties were devolved upon an appointee of the executive. Here the members of the Legislature who constitute a majority of the 'board' and 'committee,' respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of the performance of any such functions by the Legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor General, it is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one of the three among which the powers of government are divided. (Citations omitted)

The power to adopt the IRR of RA 9335 is an Executive function. By requiring prior approval of the IRR by the Oversight Committee, Section 12 engrafts Executive functions on the

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[8] 277 U.S. 189, 202-203 (1928).

Oversight Committee. This is a clear violation of the separation of powers.

The Legislature can intervene in the execution of the law only by enacting another law amending or repealing the act of the Executive. Any intervention by the Legislature other than through legislation is an encroachment on Executive power in violation of the separation of powers. Once the Legislature enacts a bill into law and presents it to the President, its law-making function is complete.

What happens to the law thereafter becomes the domain of the Executive and the Judiciary. What the Legislature can do is to *investigate* or *oversee* the implementation of the law for the purpose of enacting remedial legislation. The Legislature can also withhold budgetary appropriation necessary to implement the law. However, the Legislature cannot interpret, expand, restrict, amend or repeal the law except through a new legislation.

The approval requirement in Section 12 of RA 9335 is a classic form of the so-called **legislative veto**. The legislative veto is a device for the Legislature to usurp Executive or Judicial power in violation of the separation of powers. An American textbook writer explains the legislative veto in this manner:

> Congress, in an attempt to maintain more control over the President and over regulations promulgated by agencies of the federal government's executive branch, has in the past incorporated into legislation a provision known as the "legislative veto" or the "congressional veto." Congress sought by statute to give itself what the Constitution gives to the President. Congress typically utilized veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. **These provisions required the President or an agency official to present the proposed regulations to Congress, which retained a "right" to approve or disapprove any regulation before they take effect**.[9] (Emphasis supplied)

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[9] John E. Nowak & Ronald D. Rotunda, *CONSTITUTIONAL LAW*, 304 (6th Edition).

In the United States, the constitutionality of the legislative veto was resolved in the 1983 case of *Immigration and Naturalization Service (INS) v. Chadha*[10] where the U.S. Supreme Court declared legislative vetoes unconstitutional for violation of the Constitution's bicameralism and presentment provisions. Legislative vetoes are deemed legislative acts requiring compliance with the bicameralism and presentment provisions. Legislative acts are acts intended to affect the legal rights, obligations, relations or status of persons or entities outside the Legislature. [11]

Bicameralism requires both chambers of Congress to act in approving legislation and Congress cannot delegate this power to only one chamber, or to a committee of either or both chambers. Presentment requires Congress to present to the President for approval or veto a legislation before it becomes law.

Thus, Chief Justice Warren Burger, speaking for the U.S. Supreme Court in *Chadha*, declared:

> [T]he bicameral requirement, the Presentment Clauses, the President's veto, and Congress' power to override a veto were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks, and maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded.
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> x x x x x x x x x
>
> The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays

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[10] 462 U.S. 919 (1983).

[11] *Id.* at 952.

often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President. x x x With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

x x x x x x x x x

We hold that the Congressional veto provision in § 244(c)(2) is x x x unconstitutional.[12]

The eminent constitutionalist Professor Laurence H. Tribe explains the *Chadha* ruling in this wise:

In *INS v. Chadha*, the Supreme Court held that *all* actions taken by Congress that is "legislative" in "character" must be taken in accord with the "single, finely wrought and exhaustively considered procedure" set forth in the "explicit and unambiguous provisions" of Article I. In his opinion for the Court, Chief Justice Burger explained that the Presentment Clause and the bicamerality requirement constitute crucial structural restraints on the "hydraulic pressure inherent within [the legislature] to exceed the outer limits of its power." If the separation of powers is to be more than an "abstract generalization," the courts must enforce the bicamerality and presentment rules not only when Congress purports to be legislating but whenever it takes action that must be deemed "legislative." Since the legislative veto of Chadha's status as a permanent resident alien had to be so deemed but was neither approved by both Houses of Congress, nor presented to the President for signature or veto, it followed inexorably that it was unconstitutional.[13]

The *Chadha* ruling "sounded the death knell for nearly 200 other statutory provisions in which Congress has reserved a legislative veto."[14]

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[12] *Id.*, at 957-959.

[13] Lawrence H. Tribe, *AMERICAN CONSTITUTIONAL LAW*, Vol. 1, 142-143 (3rd Edition).

[14] Dissenting Opinion of Justice Byron White in *Chadha*, *supra* note 9.

Soon after the *Chadha* decision, the U.S. Supreme Court, in a memorandum decision, extended the *Chadha* ruling to bar legislative vetoes of **executive agency rules and regulations**. Thus, in *United States Senate v. Federal Trade Commission*,[15] the Court affirmed a Court of Appeals ruling declaring unconstitutional a provision authorizing a two-chamber veto of rules and regulations issued by the Federal Trade Commission. In *Process Gas Consumers Group v. Consumer Energy Council of America*,[16] the **separation of powers reasoning was applied for the first time to regulatory agencies**.[17] The appellate court ruling affirmed by the U.S. Supreme Court in *Process Gas Consumers Group* declares:

> We hold that Section 202(c) is unconstitutional. The primary basis of this holding is that the one-house veto violates Article I, Section 7, both by preventing the President from exercising his veto power and by permitting legislative action by only one house of Congress. **In addition, we find that the one-house veto contravenes the separation of powers principle implicit in Articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches**. Because we find these bases sufficient to resolve the issue, we do not reach the undue delegation of powers issue raised by petitioners.[18] (Emphasis supplied)

The U.S. Supreme Court has adopted the same ruling in the 1991 case of *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*.[19] In *Metropolitan Washington Airports*, the U.S. Supreme Court **categorically applied the separation of powers** in this wise:

> An Act of Congress authorizing the transfer of operating control of two major airports from the Federal Government to the Metropolitan

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[15] 463 U.S. 1216 (1983).

[16] *Id*.

[17] Nowak & Rotunda, *supra* note 8 at 306.

[18] *Consumer Energy Council v. Federal Energy Regulatory Commission, et al.*, 673 U.S. F.2d 425, 448.

[19] 501 U.S. 252, 255 (1991).

Washington Airports Authority (MWAA) conditioned the transfer on the creation by MWAA of a unique "Board of Review" composed of nine Members of Congress and **vested with veto power** over decisions made by MWAA's Board of Directors. **The principal question presented is whether this unusual statutory condition violates the constitutional principle of separation of powers, as interpreted in *INS v. Chadha, Bowsher v. Synar,* and *Springer v. Philippine Islands [citations omitted]*). We conclude, as did the Court of Appeals for the District of Columbia Circuit, that the condition is unconstitutional.** (Emphasis supplied)

Interestingly, *Metropolitan Washington Airports* cites *Springer v. Philippine Islands*,[20] where the U.S. Supreme Court voided, for violation of the separation of powers, acts of the Philippine Legislature vesting in the Senate President and House Speaker, in addition to the Governor-General, the power to vote shares of stock in government-owned corporations. The U.S. Supreme Court explained the application of the separation of powers in *Metropolitan Washington Airports* as follows:

To forestall the danger of encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on the Congress. It may not "invest itself or its Members with either executive power or judicial power." And, when it exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified in Article I.

The first constraint is illustrated by the Court's holdings in *Springer v. Philippine Islands* and *Bowsher v. Synar*. *Springer* involved the validity of Acts of the Philippine Legislature that authorized a committee of three-two legislators and one executive-to vote corporate stock owned by the Philippine Government. Because the Organic Act of the Philippine Islands incorporated the separation-of-powers principle, and because the challenged statute authorized two legislators to perform the executive function of controlling the management of the government-owned corporations, the Court held the statutes invalid. Our more recent decision in *Bowsher* involved a delegation of authority to the Comptroller General to revise the federal budget. After concluding that the Comptroller General was in effect an agent

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[20] *Supra* note 7.

of Congress, the Court held that he could not exercise executive powers:

> To permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control over the execution of the laws.... The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an officer under its control what it does not possess.

The second constraint is illustrated by our decision in *Chadha*. That case involved the validity of a statute that authorized either House of Congress by resolution to invalidate a decision by the Attorney General to allow a deportable alien to remain in the United States. Congress had the power to achieve that result through legislation, but the statute was nevertheless invalid because Congress cannot exercise its legislative power to enact laws without following the bicameral and presentment procedures specified in Article I. For the same reason, an attempt to characterize the budgetary action of the Comptroller General in *Bowsher* as legislative action would not have saved its constitutionality because Congress may not delegate the power to legislate to its own agents or to its own Members.[21] (Citations omitted)

Thus, the well-established jurisprudence in the United States is that legislative vetoes violate the separation of powers. As Professor Laurence H. Tribe explains:

The Court has likewise recognized that congressional threats to the separation of powers are particularly worrisome in that they possess "stealth" capability: as James Madison "presciently observed, the legislature 'can with greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments.'" A recent example is the decision in *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, where the Court struck down a complicated law that conditioned transfer of control of the two airports near Washington, D.C. from the federal government to local authorities on the creation by the local authorities of a "Board of Review" comprising nine Members of Congress and vested with veto power

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[21] *Supra* note 18 at 274-275.

over decisions made by the local airport agency. The Court noted that the Constitution imposes two basic restraints on Congress: (1) **it "may not 'invest itself or its members with either executive or judicial power,'"** and (2) "when it exercises its legislative power, it must follow the 'single, finely wrought and exhaustively considered procedure' specified in Article I." The Court explained that it did not need to decide just what sort of federal power the congressional Board of Review was exercising, because it was unconstitutional either way. **"If the power is executive, the Constitution does not permit an agent of Congress to exercise it. If the power is legislative, Congress must exercise it in conformity with the bicameralism and presentment requirements of Art. I, § 7**."[22] (Emphasis supplied)

Even before the *Chadha* ruling by the U.S. Supreme Court, almost all state supreme courts had consistently declared as unconstitutional legislative vetoes for violation of the separation of powers doctrine. As explained by one writer before the promulgation of the *Chadha* ruling:

> The courts that recently have rejected the one-house or two-house veto show remarkable consistency in their reasoning. **All the decisions are based on the separation of powers**. The underlying theory is that once the legislature has enacted a statute delegating authority to an administrative agency, no legislative action except another statute may nullify or amend the enabling statute or the agency's action.
>
> This result rests on two premises. First, when an agency takes action pursuant to an enabling statute, the agency is engaged in the execution of the laws and is therefore carrying out an executive function. Although statutorily created administrative agencies are allowed to perform executive functions, neither the legislature nor any sub-unit of the legislature may perform such functions. Thus, any legislative intervention in the execution of the laws by means other than a statute is an encroachment on the domain of the executive branch and violates the separation of powers. The second premise is that, for purposes of this discussion, neither a one-house nor a two-house resolution of the legislature qualifies as a statute, because neither is presented to the chief executive for approval or veto;

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[22] *Supra* note 12 at 146-147.

additionally, a one-house resolution violates the principle of bicameralism.[23] (Emphasis supplied)

Bicameralism is firmly embedded in the 1987 Constitution of the Philippines. Section 1, Article VI of the Constitution states:

> Section 1. **The legislative power shall be vested in the Congress of the Philippines** which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. (Emphasis supplied)

Legislative power is vested in Congress which consists of two chambers. Legislative power cannot be exercised solely by one of the two chambers. This precludes a one-chamber legislative veto because one chamber alone is not the Congress. The exercise of legislative power requires the act of both chambers of Congress. Legislative power cannot also be exercised by a committee of either or both chambers for such a committee is not the Congress. **Consequently, this precludes the exercise of legislative veto by a congressional committee of either or both chambers**.

Presentment is also firmly embedded in the 1987 Constitution of the Philippines. Section 27(1), Article VI of the Constitution states:

> Section 27. (1) **Every bill passed by the Congress shall, before it becomes a law, be presented to the President**. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of

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[23] L. Harold Levinson, *Legislative and Executive Veto of Rules of Administrative Agencies: Models and Alternatives*, 24 WILLIAM AND MARY LAW REVIEW 79, 86-87 (1982).

each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it. (Emphasis supplied)

Every single bill passed by Congress must be presented to the President for approval or veto. No bill passed by Congress can become law without such presentment to the President. In this sense, law-making under the Constitution is a joint act of the Legislature and the Executive. A legislative veto, being a legislative act having the force of law, cannot take effect without such presentment even if both chambers of Congress approve the legislative veto.

There are, of course, acts of Congress which the Constitution vests solely in Congress without the requirement of presentment to the President. For example, under Section 23(1), Article VI of the Constitution, Congress has the "sole power" to declare the existence of a state of war. Another example is Section 8, Article IX-B of the Constitution requiring Congressional consent before an elective or appointive public officer or employee can accept any present, emolument, office or title of any kind from a foreign government. These acts, however, are exceptions to the rule on presentment.

There are also acts that the Constitution vests on a body composed of representatives of the two chambers. Under Section 18, Article VI of the Constitution, the Commission on Appointments is composed of 12 representatives from each chamber. Likewise, there are acts that the Constitution vests solely on one chamber of Congress. Under Section 21, Article VII of the Constitution, the Senate alone ratifies treaties entered into by the President. These acts, however, are exceptions to the rule on bicameralism.

Finally, one additional reason advanced to justify the legislative veto in Section 12 is purportedly to insure that the IRR drafted by the executive agencies and the Civil Service Commission conform to the letter and spirit of RA 9335. In short, the Oversight

Committee will decide whether the implementing rules are contrary to law. This justification is a usurpation of the power of the Judiciary for only the courts can determine with finality whether the IRR violate RA 9335.

In view of the foregoing, I vote to **PARTIALLY GRANT** the petition, and declare unconstitutional the last sentence of Section 12 of RA 9335 requiring the IRR to be approved by the Joint Congressional Oversight Committee. I vote to uphold the constitutionality of the other assailed provisions of RA 9335.

CONCURRING OPINION

TINGA, *J.*:

I join Justice Corona's lucid opinion – one of the more legally significant decisions of this Court of recent years because it concludes for the first time that legislative vetoes are impermissible in this jurisdiction. I fully concur with the majority's reasoning for declaring legislative veto as invalid. Yet even as the *ponencia* aligns with most of my views, I write separately to fully explain my viewpoint.

I.

The controversy rests on the so-called "legislative veto", defined by Tribe as "measures allowing [Congress], or one of its Houses or committees, to review and revoke the actions of federal agencies and executive departments."[1] Our Constitution specifically neither prohibits nor allows legislative vetoes, unlike presidential vetoes, which are formally authorized under Section 27, Article VI. Until today, Court has likewise declined so far to pass judgment on the constitutionality of a legislative veto.[2]

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[1] L. Tribe, I. *American Constitutional Law* 142 (3rd ed., 2000.) , at 142.

[2] See, *e.g.*, *PHILCONSA v. Enriquez*, G.R. Nos. 113105, 113174, 113766, 113888, 19 August 1994, 234 SCRA 506. Neither was the question considered by the majority opinion in *Macalintal v. COMELEC*, 453 Phil. 586 (2003).

The Court is unanimous that a legislative veto, such as that contained in Section 12 of Rep. Act No. 9335 is unconstitutional. Such a ruling would be of momentous consequence, not only because the issue has never been settled before, but also because many of our statutes incorporate a similarly worded provision that empowers members of Congress to approve the Implementing Rules of various particular laws. Moreover, the invalidation of legislative vetoes will send a definite signal to Congress that its current understanding of the extent of legislative powers is awry.

Concededly, our ruling will greatly affect the workings of the legislative branch of government. It would thus be intellectually honest to also consider the question from the perspective of that branch which is the branch most affected by that ruling. Of course, the perspective of the executive should be reckoned with as well since it has traditionally inveighed against legislative vetoes. Still, if we are to consider the congressional perspective of the question, there will emerge important nuances to the question that should dissuade against any simplistic analysis of the issue.

II.

I have previously intimated that the President, in chartering the extent of his plenary powers, may be accorded a degree of flexibility for so long as he is not bound by any specific constitutional proscription. That same degree of deference should be extended to Congress as well. Thus, I wish to inquire into whether there is a constitutionally justifiable means to affirm legislative vetoes.

The emergence of the legislative veto in the United States coincided with the decline of the non-delegation doctrine, which barred Congress from delegating its law-making powers elsewhere.[3] Modern jurisprudence has authorized the delegation

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[3] See., *e.g.*, *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). See also H. Bruff & E. Gellhorn, "*Congressional Control of Administrative Regulation: A Study of Legislative Vetoes*", 90 Harv. L. Rev. 1369, 372-1373 (1977).

of lawmaking powers to administrative agencies, and there are resulting concerns that there is no constitutional assurance that the agencies are responsive to the people's will.[4] From that framework, the legislative veto can be seen as a means of limiting agency rule-making authority by lodging final control over the implementing rules to Congress. "But instead of controlling agency policy in advance by laying out a roadmap in the statute creating the agency, Congress now proposes to control policy as it develops in notice-and-comment rulemaking, after the agency's expert staff and interested members of the public have had an opportunity to assist in its formation."[5] It is a negative check by Congress on policies proposed by the agencies, and not a means for making policy directly.[6]

From the perspective of Congress, the legislative veto affords maximum consideration to the plenary power of legislation, as it bolsters assurances that the legislative policy embodied in the statute will be faithfully executed upon its implementation. The faithful execution of the laws of the land is a constitutional obligation imposed on the President,[7] yet as a matter of practice, there could be a difference of opinion between the executive and legislative branches as to the meaning of the law. The clash may be especially telling if the President and Congress are politically hostile with each other, and it bears notice that the legislative veto in the United States became especially popular beginning in the early 1970s, when the ties between the Democratic-controlled Congress and the Republican President Richard Nixon were especially frayed.[8] More recently, the current U.S. President Bush has had a penchant of attaching "signing

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[4] Bruff & Gellhorn, *supra* note 3, at 1373.

[5] *Ibid.*

[6] *Ibid.*

[7] See Sec. 17, Article VII, Constitution.

[8] "One survey found five such [legislative veto clauses] enacted between 1932 and 1939, nineteen in the 1940's, thirty-four in the 1950's, forty-nine in the 1960's, and eighty-nine enacted between 1970 and 1975." S. Breyer, *The Legislative Veto After Chadha*, 72 Geo. L.J. 785, 786 (1984).

statements" to legislation he has approved, such statements indicating his own understanding of the bill he is signing into law. The legislative veto, as a practical matter, allows Congress to prevent a countervailing attempt by the executive branch to implement a law in a manner contrary to the legislative intent.

There is nothing obnoxious about the policy considerations behind the legislative veto. Since the courts, in case of conflict, will uphold legislative intent over the executive interpretation of a law, the legislative veto could ensure the same judicially-confirmed result without need of elevating the clash before the courts. The exercise of the legislative veto could also allow both branches to operate within the grayer areas of their respective constitutional functions without having to resort to the judicial resolution of their potentially competing claims. As the future U.S. Supreme Court Justice Stephen Breyer once wrote:

> The [legislative] veto sometimes offers a compromise of important substantive conflicts embedded deeply in the Constitution. How are we to reconcile the Constitution's grant to Congress of the power to declare war with its grant to the President of authority over the Armed Forces as their Commander in Chief? The War Powers Act approaches the problem, in part, by declaring that the President cannot maintain an armed conflict for longer than ninety days if both Houses of Congress enact a resolution of disapproval. Similar vetoes are embedded in laws authorizing the President to exercise various economic powers during times of "national emergency". To take another example, how are we to reconcile Article I's grant to Congress of the power to appropriate money with Article II's grant to the President of the power to supervise its expenditure? Must the President spend all that Congress appropriates? Congress has addressed this conflict, authorizing the President to defer certain expenditures subject to a legislative veto.[9]

There are practical demerits imputed as well to the legislative veto, such as the delay in the implementation of the law that may ensue with requiring congressional approval of the

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[9] Breyer, *supra* note 8, at 789.

implementing rules.[10] Yet the question must ultimately rest not on the convenience or wisdom of the legislative veto device, but on whether it is constitutionally permissible.

In 1983, the United States Supreme Court struck a decisive blow against the legislative veto in *INS v. Chadha*,[11] a ruling which essentially held the practice as unconstitutional. It appears that the foremost consideration of the majority opinion in *Chadha* were the issues of bicameralism and presentment, as discussed by the Chief Justice in his Separate Opinion in *Macalintal v. COMELEC*.[12] The twin issues of presentment and bicameralism would especially come to fore with respect to the Joint Congressional Oversight Committee under Rep. Act No. 9335, composed as it is by seven Members from the Senate and seven Members from the House of Representatives.[13]

Chadha emphasized that the bills passed by the U.S. Congress must be presented for approval to the President of the United States in order that they may become law.[14] Section 27(1), Article VI of our Constitution imposes a similar presentment requirement. *Chadha* also noted that a bill must be concurred in by a majority of both Houses of Congress. Under our Constitution, Congress consists of a House of Representatives

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[10] Bruff & Gellhorn, *supra* note 3, at 1379.

[11] 462 U.S. 919 (1983).

[12] 453 Phil. 586 (2003). "[T]he Court [in *Chadha*] shied away from the issue of separation of powers and instead held that the provision violates the presentment clause and bicameralism. It held that the one-house veto was essentially legislative in purpose and effect. As such, it is subject to the procedures set out in Article I of the Constitution requiring the passage by a majority of both Houses and presentment to the President.xxx" *Id.*, at 763. (J. Puno, Separate Opinion)

[13] See Section 12, Rep. Act No. 9335.

[14] "The records of the Constitutional Convention reveal that the requirement that all legislation be presented to the President before becoming law was uniformly accepted by the Framers. Presentment to the President and the Presidential veto were considered so imperative that the draftsmen took special pains to assure that these requirements could not be circumvented." *INS v. Chadha*, *supra* note 11, at 946-947.

and a Senate, and the underlying uncontroverted implication is that both Houses must concur to the bill before it can become law. Assuming that the approval of the Implementing Rules to Rep. Act No. 9335 by seven Members from each House of Congress is a legislative act, such act fails either the presentment or bicameralism requirement. Such approval is neither presented to the President of the Philippines for consent, nor concurred in by a majority of either House of Congress.

Yet with respect to the implications of *Chadha* on the principle of separation of powers, there are critical informed comments against that decision. *Chadha* involved the statutory authority of either House of Congress to disapprove the decision of the executive branch to allow a deportable alien to remain in the United States. The majority had characterized such disapproval as a legislative act, since it "had the purpose and effect of altering the legal rights, duties and relations of persons."[15] Yet that emphasis "on the labels of legislative, executive and judicial" was criticized as "provid[ing] the rhetorical ammunition for a variety of cases seeking judicial reassessment of the constitutionality not only of the great number of statutes that have incorporated some kind of legislative veto mechanism, but of regulatory statutes in general that sought to delegate legislative, executive and judicial power, and various combinations thereof, to the unelected officials that run the various federal agencies."[16]

Fisher presents a veritable laundry list of criticisms of the *Chadha* reasoning, replete with accusations that the analysis employed on separation of powers detracted from the intent of the Framers, resulting in giving the "executive branch a one-sided advantage in an accommodation that was meant to be a careful balancing of executive and legislative interests."[17] He further observed:

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[15] *Id.*, at 952.

[16] A. Aman & W. Mayton, *Administrative Law* (2nd ed., 2001), at 594.

[17] L. Fisher. *Constitutional Conflicts Between Congress and the President.* (4th ed., 1997), at 153.

The Court's misreading of history and congressional procedures has produced some strange results. Its theory of government is too much at odds with the practices developed over a period of decades by the political branches. Neither administrators nor congressmen want the static model proferred by the Court. The conditions that spawned the legislative veto a half century ago have not disappeared. Executive officials still want substantial latitude in administering delegated authority; legislators still insist on maintaining control without having to pass another law. The executive and legislative branches will, therefore develop substitutes to serve as the functional equivalent of the legislative veto. Forms will change but not power relationships and the need for *quid pro quo*.[18]

And Tribe himself finds flaw in the *Chadha* analysis of what constituted a legislative act:

And why, precisely, did the veto of the suspension of Chadha's deportation have to be deemed legislative? It was "essentially legislative," according to the Court, because it "had the purpose and effect of altering the legal rights, duties and relations of persons … outside the legislative branch." Without Congress' exercise of the legislative veto in his case, Chadha would have remained in America; without the veto provision in the immigration statute, the change in Chadha's legal status could have been wrought only be legislation requiring his deportation. The difficulty with this analysis is that the same observations apply with equal validity to nearly all exercises of delegated authority, whether by a House of Congress or by an executive department or an administrative agency. Both through rule-making and through case-by-case adjudication, exercises of delegated authority change legal rights and privileges no less than do full-fledged laws.

There was perhaps less need than the Court perceived to squeeze the legislative veto into one of the three pigeonholes envisioned by the Framers. Even if Congress' action had been deemed "executive" in nature, it presumably would have been unconstitutional, since Congress may make, but not execute the laws. And if the legislative veto had been deemed "judicial," it would still have violated the

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[18] *Id.*, at 155.

separation of powers, as Justice Powell recognized in his concurring opinion.[19]

The majority in *Chadha* did not address the reality that the U.S. Congress had relied on the legislative veto device for over five decades,[20] or for that matter, the valid concerns over the executive usurpation of legislative prerogatives that led to the invention of the veto as a countervailing measure. Justice Byron White relied extensively on these concerns in his dissenting opinion in *Chadha*.

Nonetheless, the invalidation of the legislative veto in *Chadha* has caused serious discussion as to alternative constitutional means through which Congress could still ensure that its legislative intentions would not be countermanded by the executive branch. On one extreme, a Republican congressman, Nick Smith of Michigan, filed a bill requiring that significant new regulations adopted by administrative agencies be approved by a joint resolution of Congress before they would become effective.[21] Less constitutionally controversial perhaps were the suggestions of Justice Breyer in remarks he made after *Chadha* was decided. He explained that "Congress unquestionably retains a host of traditional weapons in its legislative and political arsenal that can accomplish some of the veto's objectives."[22]

These include the power to provide that legislation delegating authority to the executive expires every so often. To continue to exercise that authority, the executive would have to seek congressional approval, at which point past agency behavior that Congress disliked would become the subject of serious debate. Moreover, Congress might tailor its statutes more specifically, limiting executive power. Further, Congress can require the President, before

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[19] Tribe, *supra* note 1, at 144. Citations omitted.

[20] See note 8.

[21] N. Smith, "*Restoration of Congressional Authority and Responsibility Over the Regulatory Process*. 33 Harv. J. on Legis. 323 (1996).

[22] S. Breyer, *supra* note 8, at 792.

taking action, to consult with congressional representatives whose views would carry significant political weight. Additionally, Congress can delay implementation of an executive action (as it does when the Supreme Court promulgates rules of civil procedure) until Congress has had time to consider it an to enact legislation preventing the action from taking effect. Finally, each year Congress considers the agency's budget. If a significant group of legislators strongly opposes a particular agency decision, it might well succeed in including a sentence in the appropriations bill denying the agency funds to enforce that decision.[23]

I raise these points because even with the invalidation of the legislative veto, Congress need not simply yield to the executive branch. The invalidation of the legislative veto can be mistakenly perceived as signal by the executive branch that it can, in the guise of rule-making power, adopt measures not authorized or even forbidden in the enabling legislation. If that happens, undue weight will be shifted to the executive branch, much like what had happened when former President Marcos exercised both executive and legislative powers. One might correctly argue that the judicial branch may still exercise corrective relief against such unauthorized exercise by the executive,[24] yet the relief may not come for years to come, considering the inherently deliberative judicial process.

I do believe that there is a constitutionally sound mechanism through which Congress may validly influence the approval of a law's Implementing Rules. Section 12 of Rep. Act No. 9335 may not be such a means, but I maintain that it would be highly useful for the Court to explain how this can be accomplished. In this light, I submit the following proposed framework for invalidating the legislative veto while recognizing the pre-eminent congressional prerogative in defining the manner how legislation is to be implemented.

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[23] *Ibid.*

[24] See, *e.g.*, *John Hay People's Alternative Coalition v. Lim*, 460 Phil. 530 (2003).

III.

We can consider that in the enactment and implementation of a law, there is a legislative phase and an executive phase. The legislative phase encompasses the period from the initiation of a bill in Congress until it becomes effective as a law. On the other hand, the executive phase begins the moment the law is effective and falls within the capacity of the executive branch to enforce.

Notably, as such, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. Now, subject to the indispensable requisite of publication under the due process clause,[25] the determination as to when a law takes effect is wholly the prerogative of Congress.[26] As such, it is only upon effectivity that the law may be executed, and the executive branch acquires the duties and powers to execute that law. Before that point, the role of the executive branch, particularly the President, is limited to signing or vetoing the law. All other powers of government that attach to the proposed law are exercised exclusively by Congress and are hence, legislative in character. In fact, the United States Supreme Court, speaking through Justice Black, has gone as far as to hold that the Constitution "limits [the President's] functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."[27]

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[25] See Section 1, Article III, Constitution. In *Tañada v. Tuvera*, 230 Phil. 528 (1986), the Court also cited Section 6 of the Bill of Rights, which recognized "the right of the people to information on matters of public concern", as a constitutional basis for mandating publication of laws.

[26] As much is recognized in Article 2 of the Civil Code, which states that "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." The Court in *Tañada* recognized that "unless it is otherwise provided" referred to the date of effectivity. Simply put, a law which is silent as to its effectivity date takes effect fifteen days following publication, though there is no impediment for Congress to provide for a different effectivity date.

[27] *Youngstown Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

It is viable to hold that any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law after the execution phase has begun violates the principle of separation of powers and is thus unconstitutional. Under this principle, a provision that requires Congress or its members to approve the Implementing Rules after the law has already taken effect is unconstitutional, as is a provision that allows Congress or its members to overturn any directive or ruling made by those members of the executive branch charged with the implementation of the law.

This time or phase demarcation not only affords a convenient yardstick by which to assess the constitutionality of a legislated role for Congress *vis-à-vis* a law, it also hews to the proper allocation of governmental powers. Again, the exercise of executive powers relative to a statute can only emanate after the effectivity of the law, since before that point, said law cannot be executed or enforced. Until a law becomes effective, there are no executive functions attached to the law.

Of course, following this rationale, Section 12 of Rep. Act No. 9335 will have to be invalidated. To cite one outstanding example of what else would be invalidated as a result is the Joint Congressional Power Commission established in the EPIRA (Rep. Act No. 9136), where the Commission composed of several members of Congress exercises a continuing role in overseeing the implementation of the EPIRA.[28] The functions of the Joint Congressional Power Commission are exercised in the execution phase, and thus beyond the pale of legislative

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[28] See Section 62, Rep. Act No. 9136, which provides:

Section 62: Joint Congressional Power Commission.

Upon the effectivity of this Act, a congressional commission, hereinafter referred to as the "Power Commission", is hereby constituted. The Power Commission shall be composed of fourteen (14) members with the chairmen of the Committee on Energy of the Senate and the House of Representatives and six (6) additional members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least one (1) representative in the Power Commission.

power. There are many other provisions in our laws, such as those similar to Section 12 of Rep. Act No. 9335, that will

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The Commission shall, in aid of legislation, perform the following functions, among others:

a. Set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;

b. Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines;

c. To ensure transparency, require the submission of reports from government agencies concerned on the conduct of public bidding procedures regarding privatization of NPC generation and transmission assets;

d. Review and evaluate the performance of the industry participants in relation to the objectives and timelines set forth in this Act;

e. Approve the budget for the programs of the Power Commission and all disbursements therefrom, including compensation of all personnel;

f. Submit periodic reports to the President of the Philippines and Congress;

g. Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures; and

h. Perform such other duties and functions as may be necessary to attain its objectives.

In furtherance hereof, the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. Any person who willfully and deliberately refuses without just cause to extend the support and assistance required by the Power Commission to effectively attain its objectives shall, upon conviction, be punished by imprisonment of not less than one (1) year but not more than six (6) years or a fine of not less than Fifty thousand pesos (₱50,000.00) but not more than Five hundred thousand pesos (₱500,000.00) or both at the discretion of the court.

The Power Commission shall adopt its internal rules of procedures; conduct hearings and receive testimonies, reports and technical advice; invite or summon by subpoena *ad testificandum* any public official, private citizen or any other person to testify before it, or require any person by subpoena *duces tecum* to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Power Commission

similarly not pass muster after this ruling, and the Court will have to reckon with the real problem as to whether this decision effectively nullifies those provisions as well. Nonetheless, the Court need not invalidate those provisions in other laws yet and await the appropriate cases to do so, similar to the approach previously taken on the invalidation of municipalities created by the President in *Pelaez v. Auditor General*.[29]

IV.

I seriously disagree with Justice Carpio's assertion that the power to formulate or adopt implementing rules inheres in the executive function. That power is a legislative function traditionally delegated by Congress to the executive branch. The *ponencia* satisfactorily asserts this point through its Footnote No. 63, and I need not belabor it.

One option for congressional control over executive action is to be very specific and limiting in the delegation of power to agencies, so that their rulemaking power will in turn be limited.[30] The power to make rules and regulation is that kind of legislative power which may be delegated.[31] In practice, the United States

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shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants. The secretariat shall be headed by an executive director who has sufficient background and competence on the policies and issues relating to electricity industry reforms as provided in this Act. To carry out its powers and functions, the initial sum of twenty-five million pesos (₱25,000,000.00) shall be charged against the current appropriations of the Senate. Thereafter, such amount necessary for its continued operation shall be included in the annual General Appropriations Act.

The Power Commission shall exist for period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

[29] 122 Phil. 965 (1965).

[30] K. Sullivan & G. Gunther, *Constitutional Law* (14th ed., 2001), at 351.

[31] *State ex .rel. Wis. Inspection Bureau v. Whitman*, 196 Wis. 427, 220 N.W. 929 (1928).

Congress has engaged frequently in broad delegations that in effect require agencies to make specific sub-rules-*i.e.*, to exercise legislative power.[32] This practice has drawn some criticism that power is now concentrated in the executive branch and that it is thus necessary to restore Congress to its original status of preeminence.[33] The growth of an enormous national bureaucracy, operating for the most part within the executive branch, may have fundamentally altered the original constitutional framework and requires some sort of response if the original constitutional concerns are to be satisfied.[34]

Section 12 of Rep. Act No. 9335, or any other provision of law granting components of the executive branch the power to formulate implementing rules, is a delegation of legislative power belonging to Congress to the executive branch. Congress itself has the power to formulate those particular rules and incorporate them in the law itself. What I believe Congress is precluded from doing is to exercise such power after the law has taken effect, in other words, after the execution phase has begun. Unless such a limitation were laid down, there would ensue undue encroachment by Congress in the exercise of legislative power.

This delegable rule-making power may be classified into two types: (1) rules intended to regulate the internal management of the agencies themselves; and (2) rules supplementing a statute and intended to affect persons and entities outside the government made subject to agency regulation.[35] Either case, the power of the executive branch to promulgate such rules springs from legislative delegation. In the Philippines, the power of executive officials to enact rules to regulate the internal management of executive departments was specifically allocated to them by a

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[32] Sullivan & Gunther, *supra* note 30, at 351.

[33] G. Stone, L. Seidman, C. Sunstein, and M. Tushnet, *Constitutional Law* (4th ed., 2001), at 334.

[34] *Ibid.*

[35] *Ibid.*

statute, the Administrative Code of 1987, promulgated by President Aquino in the exercise of her then extant legislative powers. With respect to supplementary rules to particular legislation, the power of executive officials to formulate such rules derives from the legislation itself. But in no case does such power emanate actually from inherent executive power.

The rule need not be hard and fast. We may as well pay heed to Blackstone's practical observation that the "manner, time and circumstances of putting laws in execution must frequently be left to the discretion of the executive magistrates."[36] But by and large, any problem left by the absence of clear and explicit statutory language is avoided in turn by the statutory delegation of legislative power to executive officials to vest them sufficient discretion to fill in the details.[37]

We thus cannot detract from the fundamental principle that rule-making power is legislative in character and exercised by executive officials only upon a statutory delegation of legislative power. As Fisher summarizes the peculiar dynamic:

> **Presidents are obligated under the Constitution to take care that the laws be "faithfully executed." The often conflicting and ambiguous passages within a law must be interpreted by executive officials to construct the purpose and intent of Congress**. As important as intent is the extent to which a law is carried out. President Taft once remarked, "Let anyone make the laws of the country, if I can construe them."
>
> To carry out the laws, administrators issue rules and regulations of their own. The courts long ago appreciated this need. Rules and regulations "must be received as the acts of the executive, and as such, be binding upon all within the sphere of his legal and constitutional authority. Current law authorizes the head of an executive department or military department to prescribe regulations

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[36] W. Blackstone, *Commentaries*, Book 1, 270.

[37] "The nature of government often requires Congress to pass general legislation and leave to other branches the responsibility to fill in the details." Fisher, *supra* note 17, at 90, citing *Wayman v. Southard*, 10 Wheat. 1, 46 (1825).

"for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

These duties, primarily of a "housekeeping" nature, relate only distantly to the citizenry. Many regulations, however, bear directly on the public. **It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policymaking that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws. Agency rulemaking must rest on authority granted directly or indirectly by Congress.**[38]

The Court's rightful rejection of Justice Carpio's premise that the power of the President of promulgate Implementing Rules and Regulations is inherently executive provides a necessary clarification that is critical to the understanding of the Court's ruling today. Had Justice Carpio's position been adopted by the Court, the result would have been a presidency much stronger than the Constitution envisioned. Acceding to the President the power to craft Implementing Rules to legislation even if Congress specifically withholds such power to the Chief Executive would have upset the finely measured schematic of balanced powers, to the benefit of the President. Fortunately, with the disavowal of that theory, greater consideration is accorded to legislative prerogatives without compromising the important functions of the presidency.

V.

Thusly, there is nothing inherently unconstitutional in congressional participation in the formulation of implementing rules of legislation since that power is legislative in character. Yet there still are multiple roadblocks impeding a constitutionally valid exercise of that prerogative by Congress. The matters of bicameralism and presentment, as expounded in *Chadha*, are hurdles which I submit should bind the Philippine Congress as

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[38] *Id.*, at 106-107. Citations omitted.

it exercises its legislative functions. Section 12 of Rep. Act No. 9335 can be struck down on that ground alone.[39] Moreover, imposing a rule barring a legislative role in the implementation of a law after the statute's effectivity will sufficiently preserve the integrity of our system of separation of powers.

At the same time, the concerns of Congress that may have animated the rise of the legislative veto should not be disrespected by simply raising formalistic barriers against them. In practice, the legislative veto is an effective check against abuses by the executive branch. The end may not justify unconstitutional means, yet we should leave ample room for Congress to be able to address such concerns within broad constitutional parameters.

There are a myriad of creative ways by which Congress may influence the formulation of Implementing Rules without offending the Constitution. If there are especially problematic areas in the law itself which Congress is not minded to leave any room for interpretative discretion by executive officials, then the provision involved can be crafted with such specificity to preclude alternative interpretations. At the same time, commonly, legislators and their staffs may lack the expertise to draft specific language.[40] Speaking from my own legislative

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[39] The twin issues of presentment and bicameralism would especially come to fore with respect to the Joint Congressional Oversight Committee under Rep. Act No. 9335, composed as it is by seven Members from the Senate and seven Members from the House of Representatives. *Chadha* emphasized that the bills passed by the U.S. Congress must be presented for approval to the President of the United States in order that they may become law. Section 27(1), Article VI of our Constitution imposes a similar presentment requirement. *Chadha* also noted that a bill must be concurred in by a majority of both Houses of Congress. Under our Constitution, Congress consists of a House of Representatives and a Senate, and the underlying uncontroverted implication is that both Houses must concur to the bill before it can become law. Assuming that the approval of the Implementing Rules to Rep. Act No. 9335 by seven Members from each House of Congress is a legislative act, such act fails either the presentment or bicameralism requirement. Such approval is neither presented to the President of the Philippines for consent, nor concurred in by a majority of either House of Congress.

[40] Fisher, *supra* note 17, at 91.

experience, it is in the drafting of the Implementing Rules, rather than in the statute itself, that the particular expertise of the agency officials and experts tasked with the implementation of the law become especially vital.

Also, Congress can dictate which particular executive officials will draft the implementing rules, prescribe legal or factual standards that must be taken into account by such drafters, or otherwise impose requirements or limitations which such drafters are bound to comply with. Again, because the power to draft implementing rules is delegated legislative power, its exercise must be within the confines of the authority charted by Congress.

And because executive functions cannot commence until after the effectivity of the law, Congress may very well adopt creative but constitutional measures that suspend the effectivity of the law until implementing rules to its liking are crafted. There is nothing unconstitutional with suspending the effectivity of laws pending the occurrence of a stipulated condition. "[I]t is not always essential that a legislative act should be a completed statute which must in any event take effect as a law, at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking effect may be made to depend upon some subsequent event."[41]

The requirements of bicameralism and especially presentment may pose insurmountable hurdles to a provision that plainly suspends the effectivity of a law pending approval by Congress or some of its members of the implementing rules.[42] At the same time, it should be recognized that Congress does have the prerogative to participate in the drafting of the rules, and if it finds a means to do so before the execution phase has begun, without offending bicameralism or presentment, such means may be upheld.

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[41] 4 Cooley on Constitutional Limitations, cited in *Ex parte Mode*, 77 Tex. Crim. 432, 441, 180 S.W. 708, Am. Ann. Cas. 1918E (1915).

[42] Of course, the problem of presentment would be avoided if the implementing rules would also be submitted for approval to the President, but this roundabout manner should be discouraged, since it could be avoided simply by having those rules previously incorporated in the law earlier presented to the President.

EN BANC

[G.R. No. 183171. August 14, 2008]

FRANCISCO S. TATAD, *petitioner, vs.* **COMMISSION ON APPOINTMENTS,** *respondent.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; MOOT AND ACADEMIC QUESTION; AN ISSUE BECOMES MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY; CASE AT BAR.— We agree with both the trial and appellate courts. The resignation of former Vice President Guingona as Ambassador rendered the issues raised in this petition moot. It has become a non-issue such that a resolution either way would be of no practical effect. In essence, there is no more illegal appointment to speak of because the appointee ceased to occupy the subject position. An issue becomes moot and academic when it ceases to present a justiciable controversy. In such a case, there is no actual substantial relief which a petitioner would be entitled to and which would be negated by the dismissal of the petition. We have consistently held that courts will not determine a moot question in a case in which no practical relief will be granted. Petitioner insists that despite the resignation of former Vice President Guingona from the position, a resolution of the issues presented is imperative so that the public may know whether respondent Commission violated the law and public policy. Petitioner is mistaken. Because the present case lacks an actual controversy, any resolution of the issues presented would not result in an adjudication of the rights of the parties, but would take the nature merely of an advisory opinion. As this Court held in *Ticzon v. Video Post Manila, Inc.*, courts are called upon to resolve actual cases and controversies, not to render advisory opinions.

APPEARANCES OF COUNSEL

Alexander L. Bansil for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

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

THE appointment to ambassadorial positions of qualified persons over 70 years of age is at focus in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dismissing former Senator Francisco Tatad's appeal from the Order[2] of the Regional Trial Court (RTC) in Quezon City.

On May 4, 2005, respondent Commission on Appointments (Commission) issued a Certification of Consent[3] and confirmed the appointment of former Vice President Teofisto Guingona, Jr. as Ambassador Extraordinary and Plenipotentiary to the People's Republic of China with concurrent jurisdiction over the Democratic People's Republic of Korea and Mongolia. Petitioner Tatad challenged the consent before the RTC in Quezon City via a Complaint for Declaration of Nullity. The case, docketed as Civil Case No. Q-05-55417, was raffled off to Branch 219 of said court, presided by Judge Bayani V. Vargas.

Petitioner prayed that the Commision's consent be declared as void from the beginning on the ground that the appointment of former Vice President Guingona to the position was contrary to law and public policy because he was already beyond seventy (70) years old at that time.

After respondent Commission filed its Answer[4] petitioner filed a Motion for Judgment on the Pleadings.[5] Respondent opposed the motion and contended that the complaint should

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[1] *Rollo*, pp. 17-24. CA-G.R. No. 87806, dated March 17, 2008. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring.

[2] Civil Case No. Q-05-55417, dated August 30, 2006.

[3] *Rollo*, p. 5.

[4] *Id.* at 36-45.

[5] *Id.* at 46-49.

be dismissed considering that the issue had been mooted after Ambassador Guingona tendered his resignation from the position.[6]

On August 30, 2006, the RTC issued its Order[7] dismissing the complaint. The *fallo* of the RTC order runs in this wise:

> WHEREFORE, premises considered, the Motion for Judgment on the Pleadings is hereby denied and the Motion to Dismiss the instant case is Granted.[8]

Disagreeing, petitioner elevated the matter before the CA. In his appeal, petitioner argued, *inter alia*, that Republic Act (R.A.) No. 7157, otherwise known as the Philippine Foreign Service Act of 1991,[9] prohibits appointments of those beyond seventy (70) years old to ambassadorial posts; that Ambassador Guingona's resignation did not render the case moot because there must be a continuing determination of those responsible for the illegal act.

On March 17, 2008, the CA dismissed the appeal.[10]

Petitioner is now before us via Rule 45 hoisting the same issues he raised before the CA.

At the time petitioner filed his complaint before the RTC seeking to nullify the official act of respondent, former Vice President Guingona was still occupying the position of Ambassador Extraordinary and Plenipotentiary to the People's Republic of China with concurrent jurisdiction over the Democratic People's Republic of Korea and Mongolia. A favorable resolution of petitioner's complaint would have nullified respondent's consent to the appointment, resulting in the appointee being unable to officially assume the ambassadorial position.

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[6] *Id.* at 50-53.

[7] *Id.* at 54-55.

[8] *Id.* at 55.

[9] Approved on September 19, 1991.

[10] *Rollo*, pp. 17-24.

Pending the resolution of petitioner's complaint by the RTC, however,[11] former Vice President Guingona resigned from the position. On this basis, both the RTC and the CA ruled that the issue had become moot.

We agree with both the trial and appellate courts. The resignation of former Vice President Guingona as Ambassador rendered the issues raised in this petition moot. It has become a non-issue such that a resolution either way would be of no practical effect. In essence, there is no more illegal appointment to speak of because the appointee ceased to occupy the subject position.

An issue becomes moot and academic when it ceases to present a justiciable controversy. In such a case, there is no actual substantial relief which a petitioner would be entitled to and which would be negated by the dismissal of the petition.[12] We have consistently held that courts will not determine a moot question in a case in which no practical relief will be granted.[13]

Petitioner insists that despite the resignation of former Vice President Guingona from the position, a resolution of the issues presented is imperative so that the public may know whether respondent Commission violated the law and public policy.

Petitioner is mistaken. Because the present case lacks an actual controversy, any resolution of the issues presented would not result in an adjudication of the rights of the parties, but would take the nature merely of an advisory opinion. As this Court held in *Ticzon v. Video Post Manila, Inc.*,[14] courts are

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[11] No exact date was presented in the records.

[12] *Olanolan v. Commission on Elections*, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 816.

[13] *Villarico v. Court of Appeals*, G.R. No. 132115, January 4, 2002, 373 SCRA 23; *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*, G.R. Nos. 96663 & 103300, August 10, 1999, 312 SCRA 104.

[14] 389 Phil. 20, 23 (2000).

called upon to resolve actual cases and controversies, not to render advisory opinions.

ACCORDINGLY, the petition is *DENIED*.

SO ORDERED.

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

Nachura, J., no part. Justice Nachura participated in the present case as Solicitor General.

EN BANC

[A.M. Nos. 07-115-CA-J and CA-08-46-J. August 19, 2008]
(Formerly OCA IPI No. 08-131-CA-J)

ATTY. VICTORIANO V. OROCIO, *complainant, vs.* **JUSTICE VICENTE Q. ROXAS,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; THE CORRECTNESS OF A DECISION CANNOT BE CHALLENGED IN AN ADMINISTRATIVE COMPLAINT AGAINST THE JUDGE WHO RENDERED IT.— The charges for dishonesty and grave misconduct in connection with the rendition of the January 29, 2007 decision are improper. The correctness of a decision cannot be challenged in an administrative complaint against the judge who rendered it. An administrative complaint is not the proper remedy where judicial recourse is still available. Complainant should have challenged the correctness of the January 29, 2007 decision in a petition for review on *certiorari*. Furthermore,

the said decision was rendered by the Former Sixteenth Division of the Court of Appeals, a collegial act, not respondent's individual enterprise.

2. REMEDIAL LAW; INTERIM RULES OF THE COURT OF APPEALS; WHILE ACTIONS ON MOTIONS, PAPERS AND OTHER INCIDENTS OF A CASE PENDING IN THE COURT OF APPEALS ARE ACTIONS OF THAT COURT AS A COLLEGIAL BODY, IT IS THE *PONENTE* WHO INITIATES THE ACTIONS ON SAID MOTIONS, PAPERS AND PLEADINGS.— While actions on motions, papers and other incidents of a case pending in the Court of Appeals are actions of that court as a collegial body, the 2002 Internal Rules of the Court of Appeals provides that it is the *ponente* who initiates the actions on said motions, papers and pleadings. Hence, there can be no action on a motion, paper or any other incident except upon prior instruction of the *ponente*. He has the primary responsibility of ensuring that the pending incidents in a case assigned to him are properly and promptly acted on.

3. ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; REGLEMENTARY PERIOD.— Section 3, Rule 52 of the Rules of Court provides a time limit of 90 days for the Court of Appeals to resolve a motion for reconsideration. The period is reckoned from the date it is declared submitted for resolution, which is normally upon the filing of the last pleading required by the Rules or by the court.

4. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION, ORDER OR RESOLUTION, COMMITTED IN CASE AT BAR.— The non-resolution of the motion for reconsideration of the October 31, 2006 resolution and the delayed resolution of the motion for reconsideration of the January 29, 2007 decision constituted undue delay in rendering a decision, order or resolution, a less serious offense under Section 9(1), Rule 140 of the Rules of Court. Moreover, the omissions of respondent violated Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary. Judges are mandated to perform all judicial duties efficiently, fairly and with reasonable promptness. In other words, judges should never cause judicial delay.

5. ID.; ID.; DELAY IN THE ADMINISTRATION OF JUSTICE; EFFECTS.— Delay derails the administration of justice. It

> postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than this, possibilities for error in fact-finding multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.

R E S O L U T I O N

CORONA, *J.*:

> To be, or not to be: that is the question; x x x
> For who would bear the whips and scorns of time,
> Th' oppressor's wrong, the proud man's contumely,
> The pangs of despised love, the **law's delay**, x x x[1]

Delay is the implacable foe of justice. For justice delayed is justice denied. Thus, this Court must ever be vigilant to slay the dragon of delay whenever it rears its ugly head.

We are again confronted with the problem of judicial delay in this administrative complaint for dishonesty, grave misconduct, violation of the Code of Judicial Conduct and dereliction of duty against respondent Justice Vicente Q. Roxas of the Court of Appeals.

THE COMPLAINT

Complainant Atty. Victoriano V. Orocio acted as counsel for the retired employees of the National Power Corporation (NPC) in a civil case[2] against the NPC in the Regional Trial

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[1] Shakespeare, William, *Hamlet*, Act III, Scene 1, Lines 56-72.

[2] Docketed as Civil Case No. Q-04-53121.

Court of Quezon City, Branch 217.[3] After the contending parties arrived at a compromise agreement, complainant filed a motion for the approval of his charging lien. Through the said motion, he sought to enforce the provision in his retainer agreement with his clients entitling him to 15% of whatever amount or value of assets that may be recovered by his clients.

Upon approval of his lien,[4] complainant moved for the issuance of a writ of execution. This was granted in an order dated July 25, 2006 and a writ of execution[5] and notice of garnishment[6] were thereafter issued in his favor.

However, Edmund P. Angulan and Lorna T. Dy, members of the board of directors of the NPC, filed a petition for *certiorari* (with urgent prayer for issuance of a temporary restraining order [TRO] or writ of preliminary injunction) in the Court of Appeals. The petition, docketed as CA-G.R. SP No. 95786, was raffled to the Sixteenth Division with respondent as *ponente*.

On August 28, 2006, a TRO was issued enjoining the implementation of the July 25, 2006 order, the writ of execution and notice of garnishment.

Meanwhile, on August 22, 2006, NPC also filed a petition for *certiorari* with prayer for the issuance of a TRO in the Court of Appeals. This was docketed as CA-G.R. SP No. 95946 and consolidated with CA-G.R. SP No. 95786.

On October 31, 2006, the Court of Appeals issued a resolution ordering the issuance of a writ of injunction in CA-G.R. SP Nos. 95786 and 95946. Complainant moved for the reconsideration of the October 31, 2006 resolution. After petitioners (in the CA) filed their comment on December 12, 2006, complainant submitted a "manifestation with urgent motion

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[3] Presided by Judge Lydia Querubin-Layosa.

[4] Per order dated May 15, 2006.

[5] Dated July 26, 2006.

[6] Dated July 28, 2006.

to resolve" on December 15, 2006. *No action was taken on complainant's motion for reconsideration.*

On January 29, 2007, the Court of Appeals, in a decision penned by respondent, annulled and set aside the trial court's July 25, 2006 order, July 26, 2006 writ of execution and July 28, 2006 notice of garnishment. It limited complainant's collectible attorney's fees to a maximum of ₱3,512,007.32.

On February 21, 2007, complainant moved for reconsideration of the January 29, 2007 decision of the Court of Appeals. Angulan and Dy filed their comment on complainant's motion on March 29, 2007.

Pending resolution of complainant's motion for reconsideration, he filed this administrative complaint against respondent as *ponente* of the decision, assailing the January 29, 2007 decision of the Court of Appeals as "full of fabrication, distortion and misrepresentation of facts." He claimed that the attorney's fees he was asking for was the complete and final amount of attorney's fees due him, and that his motion for reconsideration of the January 29, 2007 decision remained unresolved as of September 24, 2007, the date he filed this complaint in the Office of the Court Administrator (OCA).

RESPONDENT'S COMMENT

In his comment, respondent claimed that this case was simply a harassment suit filed by a losing litigant. Complainant allegedly vented his ire on him because of the significant reduction of his attorney's fees (notwithstanding respondent's explanation in his January 29, 2007 decision why the attorney's fees sought by complainant were unreasonable.)

Respondent stressed that the January 29, 2007 decision was rendered by a collegiate body, not by him alone. If complainant was not satisfied with the decision, he should have appealed to this Court.

Respondent denied that he failed to resolve complainant's motion for reconsideration. He claimed that he was a topnotcher

in case disposal in the Court of Appeals and had a zero backlog of cases.

RECOMMENDATION OF THE OCA

In its memorandum, the OCA recommends the dismissal of the complaint for dishonesty, grave misconduct and violation of the Code of Judicial Conduct. The January 29, 2007 decision was rendered by the Court of Appeals as a collegiate body, not by respondent alone. The conclusions in the said decision were reached in consultation and rendered as a collective judgment after due deliberation.[7] Thus, the filing of charges of misconduct and unethical behavior against respondent was inappropriate.[8] Moreover, an administrative complaint was not the appropriate remedy since judicial recourse was still available.[9]

The OCA also suggests the dismissal of the charge of delay in resolving the motion for reconsideration of the January 29, 2007 decision for complainant's failure to prove the exact date when the Court of Appeals received the comment on the motion for reconsideration.

Nonetheless, the OCA opines that respondent can be held administratively liable for his failure to resolve complainant's motion for reconsideration of the October 31, 2006 resolution ordering the issuance of a writ of injunction, as this constituted undue delay in rendering a decision or order, a less serious offense.[10] It may be penalized by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.[11]

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[7] *Rondina v. Bello, Jr.*, A.M. No. CA-05-43, 08 July 2005, 463 SCRA 1.

[8] *Id.*

[9] *Bautista v. Abdulwahid*, A.M. OCA IPI No. 06-97-CA-J, 02 May 2006, 488 SCRA 429.

[10] Section 9(1), Rule 140 of the Rules of Court.

[11] Section 11(B), Rule 140 of the Rules of Court.

The OCA submits the following recommendation:

(a) the dismissal of the complaint for dishonesty, grave misconduct and violation of the Code of Judicial Conduct and

(b) the imposition of a ₱10,500 fine on respondent for his failure to resolve a motion for reconsideration, with a warning that a repetition of the same or similar offense in the future will be dealt with more severely.

THE COURT'S ACTION

The charges for dishonesty and grave misconduct in connection with the rendition of the January 29, 2007 decision are improper. The correctness of a decision cannot be challenged in an administrative complaint against the judge who rendered it. An administrative complaint is not the proper remedy where judicial recourse is still available.[12] Complainant should have challenged the correctness of the January 29, 2007 decision in a petition for review on *certiorari*.[13] Furthermore, the said decision was rendered by the Former Sixteenth Division of the Court of Appeals, a collegial act, not respondent's individual enterprise.[14]

Nevertheless, we find respondent liable for failure to resolve the motion for reconsideration of the October 31, 2006 resolution. He should also be held accountable for undue delay in resolving the motion for reconsideration of the January 29, 2007 decision.

While actions on motions, papers and other incidents of a case pending in the Court of Appeals are actions of that court as a collegial body, the 2002 Internal Rules of the Court of Appeals provides that it is the *ponente* who initiates the actions

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[12] *Bautista v. Abdulwahid, supra*.

[13] Per the OCA's memorandum, complainant filed a petition for *certiorari* in this Court questioning the January 29, 2007 decision on November 19, 2007.

[14] See *Rondina v. Bello, Jr., supra* and *Bautista v. Abdulwahid, supra*.

on said motions, papers and pleadings.[15] Hence, there can be no action on a motion, paper or any other incident except upon prior instruction of the *ponente*.[16] He has the primary responsibility of ensuring that the pending incidents in a case assigned to him are properly and promptly acted on.

Complainant filed his motion for the reconsideration of the October 31, 2006 resolution on November 6, 2006. After petitioners filed their comment on December 12, 2006, complainant submitted a "manifestation with urgent motion to resolve" on December 15, 2006. Despite this, the motion for reconsideration remained unresolved. It is therefore reasonable to conclude that respondent, as *ponente*, failed to initiate any action on the said motion.

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[15] Section 1, Rule IV (Processing of Cases and Action on Interlocutory Matters) of the 2002 Internal Rules of the Court of Appeals provides:

SEC. 1. *Procedure in the Disposition of Pleadings, Motions and Other Papers.* –

Within two (2) working days, all pleadings, motions and other papers filed with the Receiving section of the Judicial Records Division shall be entered in the docket book, stitched to the *rollo* of the case, paged consecutively and then forwarded to the Division Clerk of Court concerned.

If the Division Clerk of Court has no authority to act on such pleadings, motions and other papers, he shall prepare the agenda and submit the same to the Division, **thru the Justice concerned**, within three (3) working days from receipt of his office of the *rollo*, together with the pleadings, motions or other papers.

The Division Clerk of Court shall state in the agenda, with page references, the antecedents of the case which are necessary for an understanding thereof, a synopsis of the motion or incident and the opposition thereto, if any, the issues involved and his remarks or recommendations.

[16] The exceptions to this rule are when the Presiding Justice may act on an urgent matter in a petition, such as an application for a writ of *habeas corpus* or TRO, and there is no way of convening the Raffle Committee or calling any of its members (Section 2, Rule IV of the 2002 Internal Rules of the Court of Appeals); actions that may be done by the Division Clerk of Court (Section 2, Rule IV of the 2002 Internal Rules of the Court of Appeals) and action by a justice on a TRO or writ of preliminary injunction (Section 5, Rule VI of the 2002 Internal Rules of the Court of Appeals).

The January 29, 2007 decision is further proof that respondent totally ignored the motion for reconsideration of the October 31, 2006 resolution. While it annulled and set aside the trial court's July 25, 2006 order, July 26, 2006 writ of execution and July 28, 2006 notice of garnishment, it never mentioned anything about the preliminary injunction sought to be reconsidered by complainant. It therefore failed to comply with Section 9, Rule 58 of the Rules of Court which provides:

> Sec. 9. *When final injunction granted*. – If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.

With regard to the motion for reconsideration of the January 29, 2007 decision, Section 3, Rule 52 of the Rules of Court provides a time limit of 90 days for the Court of Appeals to resolve a motion for reconsideration.[17] The period is reckoned from the date it is declared submitted for resolution, which is normally upon the filing of the last pleading required by the Rules or by the court.[18]

The comment on complainant's motion for reconsideration of the January 29, 2007 decision was filed in the Court of Appeals on March 29, 2007. Complainant received his copy of the said comment (which was sent by registered mail) on April 3, 2007. Therefore, the motion for reconsideration of the January 29, 2007 decision should have been resolved *on or before June 27, 2007*, the 90th day from the filing of Angulan and Dy's comment on the motion for reconsideration on March 29, 2007.

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[17] Section 3, Rule 52 of the Rules of Court provides:

> Section 3. *Resolution of motion*. – **In the Court of Appeals, a motion for reconsideration shall be resolved within ninety (90) days from the date when the court declares it submitted for resolution**.

[18] Regalado, Florenz, *REMEDIAL LAW COMPENDIUM*, Sixth Revised Edition, National Bookstore, Inc. p. 587.

However, the motion for reconsideration was resolved only on *September 27, 2007* or way beyond the prescribed period. Again, the reasonable conclusion is that respondent, as *ponente*, failed to promptly initiate any action on the said motion.

The non-resolution of the motion for reconsideration of the October 31, 2006 resolution and the delayed resolution of the motion for reconsideration of the January 29, 2007 decision constituted undue delay in rendering a decision, order or resolution, a less serious offense under Section 9(1), Rule 140 of the Rules of Court.

Moreover, the omissions of respondent violated Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.[19] Judges are mandated to perform all judicial duties efficiently, fairly and with reasonable promptness. In other words, judges should never cause judicial delay.

Delay derails the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility.[20] More than this, possibilities for error in fact-finding multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit.[21] If courts do not get the facts right, there is little chance for their judgment to be right.[22]

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[19] SEC. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

[20] *Southern Pac. Transport. Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975).

[21] *Id.*

[22] *Id.*

Pursuant to A.M. No. 02-9-02-SC,[23] this administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the bar.[24]

WHEREFORE, respondent Associate Justice Vicente Q. Roxas of the Court of Appeals is hereby found *GUILTY* of violation of Section 9(1), Rule 140 of the Rules of Court, as well as of Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary. We modify the recommendation of the Office of the Court Administrator so as to *FINE* him in the amount of ₱15,000, payable within ten days from his receipt of this resolution.

Justice Roxas is *STERNLY WARNED* that the commission of any act of impropriety in the future will merit a more severe penalty.

Let a copy of this resolution be attached to the personal records of Justice Roxas.

SO ORDERED.

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

Carpio, J., on official leave.

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[23] Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan, Judges of Regular and Special Courts, and Court Officials Who Are Lawyers as Disciplinary Proceedings Against Them Both as Officials and as Members of the Philippine Bar. Dated September 17, 2002.

[24] See *Juan De la Cruz v. Carretas*, A.M. No. RTJ-07-2043, 05 September 2007, 532 SCRA 218.

SECOND DIVISION

[ADM. CASE No. 5364. August 20, 2008]

JUANITA MANAOIS, *complainant, vs.* **ATTY. VICTOR V. DECIEMBRE,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; POSSESSION OF GOOD MORAL CHARACTER IS NOT ONLY A GOOD CONDITION PRECEDENT TO THE PRACTICE OF LAW, BUT ALSO A CONTINUING QUALIFICATION FOR ALL MEMBERS OF THE BAR.— Canon 1, Rule 1.01 of the Code of Professional Responsibility provides: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES. Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. The Code of Professional Responsibility likewise mandates that "a lawyer shall at all times uphold the integrity and dignity of the legal profession." To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Evidently, respondent failed to comply with the foregoing canons. As shown by the records and as found by the Commissioner, complainant had supplied respondent with blank personal checks as security for the ₱20,000 loan she had contracted and which respondent subsequently deceitfully filled out with various amounts they had not agreed upon and with full knowledge that the loan had already been paid. After the filled-out checks had been dishonored upon presentment, respondent even imprudently filed multiple lawsuits against complainant. Verily, respondent is guilty of serious dishonesty and professional misconduct. He committed an act indicative of moral depravity not expected from and highly unbecoming of a member of the Bar. The fact that the conduct pertained to respondent's private dealings with complainant is of no moment. A lawyer may be suspended or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good

demeanor. Possession of good moral character is not only a good condition precedent to the practice of law, but also a continuing qualification for all members of the Bar.

APPEARANCES OF COUNSEL

Teodulo Punzalan for complainant.

R E S O L U T I O N

TINGA, *J.*:

Before this Court is an administrative complaint for disbarment filed by Juanita Manaois (complainant) against Atty. Victor V. Deciembre (respondent) for willful and deliberate falsification and conduct unbecoming a member of the Bar.

Complainant gave the following account of the facts that spawned the present administrative Complaint.[1]

Complainant is a government employee working as a mail sorter at the Manila Central Post Office. Sometime in 1998, she applied for a loan of ₱20,000 from Rodella Loans, Inc., through respondent. As security for the loan, respondent required her to issue and deliver to him blank checks that he would fill out according to their agreed monthly installments. Notwithstanding the full payment of the loan, respondent allegedly failed to return the remaining blank checks. Respondent told complainant that the loan had not yet been paid and that the payments had been credited to the interest on the loan. Respondent threatened complainant with a lawsuit in the event of nonpayment. Respondent allegedly filled out the blank checks with different amounts and made it appear that complainant had them exchanged them for cash in the total amount of ₱287,500.00 for use in her business venture. Using these checks as basis, respondent filed several cases against complainant for estafa and for violation

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[1] *Rollo*, pp. 1-8; Petition before the Integrated Bar of the Philippines, dated 23 October 2000.

of Batas Pambansa Blg. 22 before the City Prosecutor's Office of Quezon City and Pasig City.[2]

Complainant contended that no man of respondent's stature would be too foolish to extend a ₱287,500.00 loan to a mere mail sorter earning barely ₱6,000.00 a month on the bare assurance that her postdated checks would be encashed on their due dates.[3]

In his Comment[4] dated 20 March 2001, respondent countered that complainant's allegations are devoid of any truth and merit. He maintained that it was in fact complainant who deceived him by not honoring her commitment under the transactions. Those transactions had allegedly been covered by the postdated checks which were subsequently dishonored due to "ACCOUNT CLOSED." Thus, he filed the criminal cases against her. He also claimed that the checks had already been fully filled out when complainant affixed her signature thereon in his presence. Respondent further asserted that he had given complainant the amount of money indicated in the checks because he was convinced, based on their previous transactions, that complainant had capacity to pay.

In a Resolution[5] dated 17 October 2001, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision within 90 days from notice.

Commissioner Wilfredo E.J.E. Reyes conducted hearings on the matter. In his Report and Recommendation[6] dated 7 August 2007, he found complainant's version of the facts more credible than that of respondent and, accordingly, found respondent guilty of tampering with the checks of complainant.

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[2] *Id*. at 1-3, 6.

[3] *Id*. at 6-7.

[4] *Id*. at 62-68.

[5] *Id*. at 76.

[6] *Id*. at 574-584.

He likewise noted that this is not just an isolated case as several of complainant's officemates had also fallen prey to respondent's cunning scheme. Thus, he recommended respondent's suspension from the practice of law for five (5) years. The IBP Board of Governors adopted and approved the Commissioner's report and recommendation in Resolution No. XVIII-2007-133 dated 28 September 2007.

The Court sustains the resolution of the IBP Board of Governors except as to the recommended penalty.

Canon 1, Rule 1.01 of the Code of Professional Responsibility provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

The Code of Professional Responsibility likewise mandates that "a lawyer shall at all times uphold the integrity and dignity of the legal profession."[7] To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.[8]

Evidently, respondent failed to comply with the foregoing canons. As shown by the records and as found by the Commissioner, complainant had supplied respondent with blank personal checks as security for the ₱20,000 loan she had contracted and which respondent subsequently deceitfully filled out with various amounts they had not agreed upon and with full knowledge that the loan had already been paid. After the filled-out checks had been dishonored upon presentment,

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[7] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 7.

[8] *Marcelo v. Javier, Sr.*, A.C. No. 3248, 18 September 1992, 214 SCRA 1, 13.

respondent even imprudently filed multiple lawsuits against complainant. Verily, respondent is guilty of serious dishonesty and professional misconduct. He committed an act indicative of moral depravity not expected from and highly unbecoming of a member of the Bar.[9] The fact that the conduct pertained to respondent's private dealings with complainant is of no moment. A lawyer may be suspended or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a good condition precedent to the practice of law, but also a continuing qualification for all members of the Bar.[10]

For the record, respondent has already been indefinitely suspended from the practice of law in A.C. No. 5365 entitled *Olbes v. Deciembre*,[11] a case involving an offense and a set of facts similar to the case at bar. In the said case, the Court notes that complainants therein averred that "many of their officemates—among them, **Juanita Manaois**, Honorata Acosta and Eugenia Mendoza—had suffered the same fate in their dealings with respondent (Deciembre)."[12] This demonstrates respondent's propensity to employ deceit and misrepresentation. As such, following our ruling in *Olbes*, the Court hereby imposes the same penalty upon respondent in the present case.

WHEREFORE, Atty. Victor V. Deciembre is found guilty of gross misconduct and violation of Rules 1.01 and 7.03 of the Code of Professional Responsibility. He is *SUSPENDED* indefinitely from the practice of law.

Let copies of this Resolution be furnished all courts, as well as the Office of the Bar Confidant which is directed to append

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[9] *Olbes v. Deciembre*, A.C. No. 5365, 27 April 2005, 457 SCRA 341, 353.

[10] *Rural Bank of Silay, Inc. v. Atty. Pila*, 403 Phil. 1, 9 (2001).

[11] A.C. No. 5365, 27 April 2005, 457 SCRA 341.

[12] *Id.* at 345-346.

a copy hereof to respondent's personal record. Let another copy be furnished the National Office of the Integrated Bar of the Philippines.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-08-1712. August 20, 2008]
(Formerly OCA IPI NO. 08-2020-MTJ)

CONRADO Y. LADIGNON, *complainant, vs.* **JUDGE RIXON M. GARONG, Municipal Trial Court (MTC), San Leonardo, Nueva Ecija,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; IMPROPRIETY; COMMITTED IN CASE AT BAR.— The Judge's claim that he used an ordinary bond papers and placed thereon his official station as return address is not totally without merit. For, indeed, this is not an unusual practice and it would be hypocritical to deny its occurrence at all levels of the Judiciary. For example, some members of the Judiciary may use a social card with the letterhead of their office to indicate their address as well as their station within the judicial hierarchy; some also use notepads bearing their names, designation and station. A thin line, however, exists between what is proper and what is improper in such use, and this was the line that the respondent Judge crossed when he used his letterhead and title the way he did. As the Report stated, his use of the letterhead and his designation as a Judge in a situation of potential dispute gave

"the appearance that there is an implied or assured consent of the court to his cause." This circumstance, to our mind, was what marked the respondent Judge's use of his letterhead and title as improper. In other words, the respondent Judge's transgression was not *per se* in the use of the letterhead, but in not being very careful and discerning in considering the circumstances surrounding the use of his letterhead and his title. To be sure, this is not the first case relating to the use of a letterhead that this Court has encountered and passed upon. In *Rosauro v. Kallos,* we found the respondent Judge liable for violating Rule 2.03 of the Code of the Judicial Conduct when he used his stationery for his correspondence on a private transaction with the complainant and his counsel — parties with a pending case in his court. The Court held: By using his sala's stationery other than for official purposes, respondent Judge evidently used the prestige of his office x x x in violation of Rule 2.03 of the Code. We do not depart from this rule on the use of official stationary. We clarify, however, that the use of a letterhead should not be considered independently of the surrounding circumstances of the use — the underlying reason that marks the use with the element of "impropriety" or "appearance of impropriety." In the present case, the respondent Judge crossed the line of propriety when he used his letterhead to report *a complaint involving an alleged violation of church rules* and, possibly, *of Philippine laws.* Coming from a judge with the letter addressed to a foreign reader, such report could indeed have conveyed the impression of official recognition or notice of the reported violation. The same problem that the use of letterhead poses, occurs in the use of the title of "Judge" or "Justice" in the correspondence of a member of the Judiciary. While the use of the title is an official designation as well as an honor that an incumbent has earned, a line still has to be drawn based on the circumstances of the use of the appellation. While the title can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests. Nor can the prestige of a judicial office be used or lent to advance the private interests of others, or to convey or permit others to convey the impression that they are in a special position to influence the judge. To do any of these is to cross into the prohibited field of impropriety.

2. ID.; ID.; THE PRIVATE AS WELL AS THE OFFICIAL CONDUCT OF A JUDGE MUST AT ALL TIMES BE FREE FROM THE APPEARANCE OF IMPROPRIETY.— Time and again, this Court has reminded the members of the Judiciary that one who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him; his private as well as his official conduct must at all times be free from the appearance of impropriety. Because appearance is as important as reality in the performance of judicial functions, a judge — like Caesar's wife — must not only be pure and faithful but must be above suspicion. The respondent Judge, even if he did not intend to take undue advantage of the use of his letterhead and his title, at least gave the appearance of impropriety when he did so under the circumstances of his use. To this extent, we find him sufficiently liable to merit the admonition and warning of this Court regarding any future inappropriate use of his letterhead and title. We limit ourselves to an admonition and warning since this is the respondent's first brush with our ethical rules and no bad faith or ill motive attended his actions.

R E S O L U T I O N

BRION, *J.*:

The present administrative case has its roots in the letter dated July 17, 2006 of Judge Rixon M. Garong, Municipal Trial Court, San Leonardo, Nueva Ecija (*respondent Judge*), addressed to the Chairman, Administrative Council, First United Methodist Church, 28400 Evergreen, Flat Rock, Michigan, USA 48134. Judge Garong forwarded, through his letter, a copy of the letter-complaint of one Rolando G. Gustilo of the Banard Kelly Memorial United Methodist Church, complaining of the surreptitious manner of incorporating their church and singling out Conrado M. Ladignon (*Ladignon*) – the complaint in this administrative case – to be part of the deception.

The respondent Judge's letter prompted Ladignon to complain to the Justices of this Court against the respondent Judge's improper conduct as a member of the Judiciary, for his use in

a private communication of his official court stationery and his title as a judge.

Chief Justice Reynato S. Puno, through a 1st indorsement dated December 3, 2007, referred Ladignon's letter to Court Administrator Zenaida N. Elepano, for appropriate action. The latter in turn required Judge Garong to comment on Ladignon's complaint.

The respondent Judge admitted using the letterhead of his court and signing his letter using the word "judge." He claimed, however, that he merely used an ordinary bond paper where he typed his court's station "to indicate the return or inside address" from where he wrote the letter. He further alleged that he "did not see any harm or abuse in using the word 'judge' on the honest belief that he is entitled to use such appellation," and that "[t]he practice of using papers in whatever sizes with the address of their office printed on it is a very regular occurrence among government offices, be it a personal or official one."

On May 22, 2008, Court Administrator Zenaida N. Elepaño submitted her evaluation, reporting as follows:

> The court's heading or letterhead serves as a primary identifier of the office. Written correspondence bearing the court's heading gives the impression that it has the imprimatur of the court, and that the signatory carries such representation. Considering this important implication, scrupulous use of the court's heading must be observed at all times.
>
> Respondent's use of the court's heading in his personal letter to the First United Methodist Church (FUMC) in Michigan, USA is inappropriate. He has unwittingly dragged the name of the court into his private affairs, giving the appearance that there is an implied or assured consent of the court to his cause. Notwithstanding his avowed good intentions, regard should have been given to the possible and even actual harm that inappropriate use of the court heading might entail. Hence, respondent judge's use of the court heading outside of judicial business warrants disciplinary action for violation of the Code of Judicial Conduct particularly Section 1, Canon 4 which states that "judges shall avoid impropriety and the appearance of impropriety in all of their activities."

We agree with the Report that what is involved here is the rule that "Judges shall avoid impropriety and the appearance of impropriety in all of their activities."[1] Indeed, members of the Judiciary should be beyond reproach and suspicion in their conduct, and should be free from any appearance of impropriety in the discharge of their official duties as well as in their personal behavior and everyday life. No position exacts a greater demand for moral righteousness and uprightness on the individual than a seat in the Judiciary. Where we significantly differ with the Report is in its sweeping implication that any use of a court's letterhead for non-official transactions would necessarily expose the user to liability for "impropriety" or giving the "appearance of impropriety."

The Judge's claim that he used an ordinary bond papers and placed thereon his official station as return address is not totally without merit. For, indeed, this is not an unusual practice and it would be hypocritical to deny its occurrence at all levels of the Judiciary. For example, some members of the Judiciary may use a social card with the letterhead of their office to indicate their address as well as their station within the judicial hierarchy; some also use notepads bearing their names, designation and station.

A thin line, however, exists between what is proper and what is improper in such use, and this was the line that the respondent Judge crossed when he used his letterhead and title the way he did. As the Report stated, his use of the letterhead and his designation as a Judge in a situation of potential dispute gave "the appearance that there is an implied or assured consent of the court to his cause." This circumstance, to our mind, was what marked the respondent Judge's use of his letterhead and title as improper. In other words, the respondent Judge's transgression was not *per se* in the use of the letterhead, but in not being very careful and discerning in considering the circumstances surrounding the use of his letterhead and his title.

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[1] Canon 4, Section 1, New Code of Judicial Conduct.

To be sure, this is not the first case relating to the use of a letterhead that this Court has encountered and passed upon. In *Rosauro v. Kallos*,[2] we found the respondent Judge liable for violating Rule 2.03 of the Code of the Judicial Conduct when he used his stationery for his correspondence on a private transaction with the complainant and his counsel – parties with a pending case in his court. The Court held:

> By using his sala's stationery other than for official purposes, respondent Judge evidently used the prestige of his office x x x in violation of Rule 2.03 of the Code.

We do not depart from this rule on the use of official stationary. We clarify, however, that the use of a letterhead should not be considered independently of the surrounding circumstances of the use – the underlying reason that marks the use with the element of "impropriety" or "appearance of impropriety." In the present case, the respondent Judge crossed the line of propriety when he used his letterhead to report *a complaint involving an alleged violation of church rules* and, possibly, *of Philippine laws*. Coming from a judge with the letter addressed to a foreign reader, such report could indeed have conveyed the impression of official recognition or notice of the reported violation.

The same problem that the use of letterhead poses, occurs in the use of the title of "Judge" or "Justice" in the correspondence of a member of the Judiciary. While the use of the title is an official designation as well as an honor that an incumbent has earned, a line still has to be drawn based on the circumstances of the use of the appellation. While the title can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests. Nor can the prestige of a judicial office be used or lent to advance the private interests of others, or to convey or permit others to convey the impression that they are in a special position to

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[2] A.M. No. RTJ-03-1796, February 10, 2006, 482 SCRA 149.

influence the judge.[3] To do any of these is to cross into the prohibited field of impropriety.

Time and again, this Court has reminded the members of the Judiciary that one who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him; his private as well as his official conduct must at all times be free from the appearance of impropriety. Because appearance is as important as reality in the performance of judicial functions, a judge – like Caesar's wife – must not only be pure and faithful but must be above suspicion.[4] The respondent Judge, even if he did not intend to take undue advantage of the use of his letterhead and his title, at least gave the appearance of impropriety when he did so under the circumstances of his use. To this extent, we find him sufficiently liable to merit the admonition and warning of this Court regarding any future inappropriate use of his letterhead and title. We limit ourselves to an admonition and warning since this is the respondent's first brush with our ethical rules and no bad faith or ill motive attended his actions.

WHEREFORE, we find respondent Judge Rixon M. Garong of the Metropolitan Trial Court, San Leonardo, Nueva Ecija, liable under Canon 2 of the Code of Judicial Ethics and Rule 2.03 of the Code of Judicial Conduct. We accordingly *ADMONISH* him to be ever mindful of the standards he has to observe in his use of his letterhead and title, and *WARN* him that a repetition of this transgression shall be dealt with more severely.

SO ORDERED.

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

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[3] Canon 2, Rule 2.03 of the Code of Judicial Conduct.

[4] *Dionisio v. Escaño,* A.M. No. RTJ-98-1400, February 1, 1999.

THIRD DIVISION

[A.M. No. P-07-2339. August 20, 2008]

Failure of ATTY. JACINTO B. PEÑAFLOR, JR., Clerk of Court VI, Regional Trial Court, San Jose, Camarines Sur, to Submit the Required Monthly Report of Collections, Deposits, and Withdrawals.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CLERKS OF COURT; FUNCTION.— Clerks of court are important functionaries of the judiciary. Their administrative functions are vital to the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They perform a very delicate function as custodian of the court's funds, revenues, records, property and premises. They are liable for any loss, shortage, destruction or impairment of such funds and property. They are specifically imbued with the mandate to safeguard the integrity of the court as well as the efficiency of its proceedings, to preserve respect for and loyalty to it, to maintain the authenticity or correctness of court records, and to uphold the confidence of the public in the administration of justice. Thus, they are required to be persons of competence, honesty and probity.

R E S O L U T I O N

NACHURA, *J.*:

The instant administrative matter arose from the failure of Atty. Jacinto Peñaflor, Clerk of Court, Regional Trial Court (RTC), San Jose, Camarines Sur, to submit the required Monthly Report of Collections, Deposits and Withdrawals.

The facts of the case, gleaned from the report of the Office of the Court Administrator (OCA), are as follows:

Two notices directing the submission of the reports were sent to Atty. Peñaflor by Ms. Hedelina F. Alcaraz, then Supreme Court (SC) Chief Judicial Staff Officer, Accounting Division, Financial Management Office (FMO), OCA. The first one was sent on May 18, 2004[1] and the second on July 21, 2004[2] ordering Atty. Peñaflor to submit the following monthly reports of collections and deposits for the following accounts, to wit:

Sheriff's Trust Fund – January 1999-February 2001, September 2001. November 2001-March 2002. March-May 2003. July 2003-July 2004

Fiduciary Fund – November 2000. January 2001. February-April 2002. November 2003-July 2004

General Fund – February 2002

Sheriff's General Fund – November 2001. November 2003

Special Allowance for Justices & Judges – December 2003. March 2004-July 2004

Despite the directives, Atty. Peñaflor failed to submit the required reports which prompted the OCA to request the Honorable Court for authority to withhold his salaries pending his compliance,[3] pursuant to Section 122 of Presidential Decree 1445. The Court approved the request on August 6, 2004[4] and Atty. Peñaflor's salaries were withheld effective September 2004.

In a letter dated January 11, 2005,[5] Atty. Peñaflor was directed anew to submit the required monthly reports but he still failed to submit them.

On May 19, 2005, then Deputy Court Administrator Zenaida N. Elepaño required Atty. Peñaflor to show cause within a

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[1] *Rollo*, p. 12.

[2] *Id.* at 10.

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

[4] *Id.* at 21.

[5] *Id.* at 9.

non-extendible period of five (5) days why no disciplinary sanctions should be taken against him for gross neglect of duty, incompetence and conduct prejudicial to the best interest of the service.[6] Atty. Peñaflor failed to submit his explanation.

On October 25, 2006, Atty. Peñaflor was reminded again to submit the required reports.[7] Still, no compliance was received by the OCA.

On June 14, 2007, the OCA finally received a letter dated June 13, 2007[8] from Atty. Peñaflor. He explained that he suffered a stroke in September 2004 and was unable to report for work for more than a month. For these reasons, he was unable to submit regularly the monthly reports of his collections.

He recounted that on March 19, 2007, his books of accounts were audited by the OCA. He was ordered to deposit within 24 hours upon receipt of the audit report "all amount which he should have deposited from his collections as found by the audit team." He had already complied with said order by depositing "the amount" within the prescribed period and had also already submitted all the monthly collection reports he was required to submit when he appealed for the Court's compassion to release his withheld salaries.

On July 11, 2007, the Court resolved to consider the Memorandum dated February 5, 2007 of Atty. Lilian Barribal-Co, Chief of Office, FMO, OCA, as a complaint for insubordination and gross neglect of duty against Atty. Peñaflor, and to re-docket the same as a regular administrative matter. The Court resolved further to direct Atty. Peñaflor to file his comment within ten (10) days from receipt of notice, but withheld his salaries and allowances pending the resolution of the instant administrative case.

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[6] *Id.* at 8.

[7] *Id.* at 7.

[8] *Id.* at 31-32.

In a Memorandum for the Court dated August 28, 2007, the OCA reported that Atty. Peñaflor had already submitted the required monthly reports, and thus recommended the release of his withheld salaries. Acting on said Memorandum, the Court granted on October 17, 2007 Atty. Peñaflor's request for the release of his salaries, and directed Atty. Co to immediately cause the release of the withheld salaries of Atty. Peñaflor.

Prior thereto, or on September 25, 2007, the OCA received Atty. Peñaflor's Comment dated September 7, 2007, which was in compliance with the Court's July 11, 2007 Resolution. In the said comment, respondent Atty. Peñaflor denies the allegation in the Memorandum of Atty. Co that he "failed to submit, despite due notice, the required monthly reports and to comply with the show cause order which clearly shows his indifference and willful disregard of the authority of said Office and his willful disobedience or insubordination needs correction and requires the exercise of the court's disciplinary action."

Respondent explains that on March 19, 2004, a team from the Court Management Office (CMO), OCA, conducted a financial audit on the Office of the Clerk of Court (OCC), San Jose, Camarines Sur, and arrived at "zero accountability" after examining and verifying the cashbooks of all court funds.[9] His office also furnished the audit team the monthly financial reports which were allegedly not received by the OCA, albeit the OCC mailed them to the OCA. Until the audit period of March 19, 2004, therefore, there were no financial reports not submitted to the OCA. Thereafter, his office, though sometimes belatedly, periodically submitted the monthly financial reports of collections.

Respondent claims that the withholding of his salaries in September 2004 was "too drastic," considering that he had just been audited on March 19, 2004 as regards all his accountabilities covering the period from the time he assumed office as Clerk of Court, OCC-RTC, San Jose, Camarines Sur in May 2002 until the audit date. Respondent said he submitted

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[9] *Id.* at 46.

to the audit team all the financial reports the team directed him to submit. Granting that he failed to submit the monthly reports from the audit date of March 19, 2004 until August 2004, or for a period of five (5) months, he believes that he should have first been given the opportunity to explain before his salaries were withheld.

He relates that in the same month his salaries were withheld, or particularly on the morning of September 28, 2004,[10] he suffered a stroke. He was unable to report for work for one and a half (1½) months,[11] or from October to November 15, 2004 because of residual paralysis. The SC Welfare Assistance Board even validated his request for medical assistance benefit.[12] This caused the delay in the submission of the required reports. Despite his desire to finish and submit the reports soonest, he was constrained to work slowly due to his mental and physical condition. He has not since then fully recovered and recuperated from his stroke.

Respondent claims that he complied with the May 19, 2005 show-cause order of then Deputy Court Administrator Elepaño through his letter dated June 3, 2005.[13]

He also claims that he complied with the October 25, 2006 letter of Ms. Hedeliza Alcaraz by preparing the required financial reports and mailing them to "the offices concerned." He, however, failed to inform Ms. Alcaraz that he already submitted them to the OCA. Misappreciation of facts may have led Atty. Co to submit the memorandum, which became the basis of the instant administrative complaint.

Respondent states that notwithstanding his dilemma, he has dutifully performed his tasks and obligations as Clerk of Court of the OCC-RTC, San Jose, Camarines Sur. As of May 4,

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[10] *Id.* at 48.

[11] *Id.* at 50-51.

[12] *Id.* at 52.

[13] *Id.* at 56-57.

2007 he already submitted to the OCA the required monthly financial reports to comply with the directive of the SC, particularly SC Circular No. 32-93, and thus, prays for the dismissal of the instant case.

According to the Office of Administrative Services, OCA, Atty. Peñaflor was appointed Clerk of Court VI at the OCC-RTC, San Jose, Camarines Sur on October 17, 2002. Prior to his appointment, he was already the Officer-in-Charge (OIC)-Clerk of Court starting May 1, 2002, replacing Atty. Evelyn R. Rivera who retired on April 18, 2002.

From March 16 to 19, 22 and 25, 2004, an audit team headed by Mr. Eduardo G. Tesea conducted a financial audit and reconciliation of the books of accounts and accountabilities of Atty. Rivera and Atty. Peñaflor covering the period January 1, 1983 to February 2004. The team reported, among others, respondent's failure to timely submit his monthly and quarterly reports of collections to the Revenue Section, Accounting Division, FMO, OCA.

Upon verification, Mr. Tesea confirmed respondent's claim in his comment that he furnished the audit team copies of the delayed monthly reports. He is, however, unsure whether or not copies of those reports were also sent by the respondent to the Revenue Section.

Notably, some of the monthly reports required from respondent were for periods when he was not yet the accountable officer. Ms. Gilda A. Sumpo, OIC, Revenue Section, Accounting Division, FMO, OCA explained that the respondent was asked to submit all the overdue monthly financial reports of the OCC, RTC, San Jose, Camarines Sur, because he was the accountable officer. Respondent failed to call the OCA's attention or explain that some of the monthly reports he was asked to submit corresponded to the term of Atty. Rivera. Respondent simply ignored the letters sent to him.

Further verification with Ms. Sumpo showed that based on the OCA's records, respondent's monthly reports were usually mailed and submitted late. She observed that respondent submitted

his monthly reports by batches. For example, the monthly reports for the Judiciary Development Fund (JDF) and Fiduciary Fund for the months of March 2004 to August 2004, were all submitted by respondent in one batch and all were received by the Revenue Section only in October 2004. Several months after he had reported back to work from his stroke, most of respondent's monthly reports were still submitted late and by batches. This is evident from the list he provided in his Comment,[14] showing the dates he mailed his monthly reports of funds collected.

The OCA finds the respondent liable for simple neglect of duty and recommends the imposition of a fine of ₱5,000.00, this being his first administrative offense. Under the circumstances, we find the OCA's findings and recommendations in order.

Clerks of court are important functionaries of the judiciary. Their administrative functions are vital to the prompt and sound administration of justice.[15] Their office is the hub of adjudicative and administrative orders, processes and concerns.[16] They perform a very delicate function as custodian of the court's funds, revenues, records, property and premises.[17] They are liable for any loss, shortage, destruction or impairment of such funds and property.[18] They are specifically imbued with the mandate to safeguard the integrity of the court as well as the efficiency of its proceedings, to preserve respect for and loyalty to it, to maintain the authenticity or correctness of court records, and to uphold the confidence of the public in the administration

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

[15] *Escañan v. Monterola II*, A.M. No. P-99-1347, February 6, 2001, 351 SCRA 228.

[16] *Solidbank Corporation v. Capoon, Jr.*, A.M. No. P-98-1266, April 15, 1998, 289 SCRA 9.

[17] *Office of the Court Administrator v. Orbigo-Marcelo*, A.M. No. P-00-1415-MeTC, August 30, 2001, 364 SCRA 1.

[18] *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408.

of justice.[19] Thus, they are required to be persons of competence, honesty and probity.[20]

WHEREFORE, the Court finds Atty. Jacinto B. Peñaflor, Jr., Clerk of Court VI, RTC, San Jose, Camarines Sur, *GUILTY of SIMPLE NEGLECT OF DUTY* and fines him ₱5,000.00 with a stern warning that a repetition of the same offense will be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-07-2036. August 20, 2008]
(Formerly OCA IPI No. 07-2543-RTJ)

JESUS G. CRISOLOGO, *complainant, vs.* **JUDGE MARIVIC TRABAJO DARAY, REGIONAL TRIAL COURT, DIGOS CITY, DAVAO DEL SUR,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; A JUDGE CANNOT BE SUBJECTED TO LIABILITY FOR ANY OF HIS OFFICIAL ACTS, NO MATTER HOW ERRONEOUS, AS LONG AS HE ACTS IN GOOD FAITH.— It is settled that as a matter of policy, the acts of a judge in his judicial capacity are not subject to

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[19] *Marasigan v. Buena*, A.M. No. 95-1-01-MTCC, January 5, 1998, 284 SCRA 1.

[20] *Cain v. Neri*, A.M. No. P-98-1267, July 13, 1999, 310 SCRA 207.

disciplinary action. He cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; EXPLAINED.— [T]he judges' inexcusable failure to observe the basic laws and rules will render them administratively liable. When the law is so simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. In any case, to constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, such decision, order or act must be attended by bad faith, fraud, dishonesty, or corruption. Good faith and absence of malice, corrupt motives or improper considerations, are sufficient defenses in which a judge charged with ignorance of the law can find refuge.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO INTERVENE; THE ALLOWANCE OR DISALLOWANCE OF A MOTION TO INTERVENE IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention.

4. JUDICIAL ETHICS; JUDGES; THE FILING OF AN ADMINISTRATIVE COMPLAINT IS NOT THE PROPER REMEDY FOR THE CORRECTION OF ACTIONS OF A JUDGE PERCEIVED TO HAVE GONE BEYOND THE NORMS OF PROPRIETY, WHERE A SUFFICIENT REMEDY EXISTS.— The filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; NOTICE OF APPEAL; EXPLAINED.— Complainant erroneously thought that when respondent failed to act on his notice of appeal, he lost his right to appeal the court's order denying his motion

for intervention and that his only remedy was to file a petition for *certiorari* with the CA which he, in fact, filed. He failed to consider that a party's appeal by notice of appeal is deemed perfected as to him, upon the filing of the notice of appeal in due time and upon payment of the docket fees. The notice of appeal does not require the approval of the court. The function of the notice of appeal is merely to notify the trial court that the appellant was availing of the right to appeal, and not to seek the court's permission that he be allowed to pose an appeal. The trial court's only duty with respect to a timely appeal by notice of appeal is to transmit the original record of the case to the appellate court. The court is given thirty (30) days from the perfection of the appeal within which to transmit the record.

APPEARANCES OF COUNSEL

Crisologo Law Office and *Dela Serna Beja & Associates* for complainant.

Kho Roa & Partners for respondent.

D E C I S I O N

NACHURA, *J.*:

In a Complaint[1] dated September 1, 2006, complainant Jesus G. Crisologo charged respondent Judge Marivic Trabajo Daray, in her capacity as Acting Presiding Judge of the Regional Trial Court (RTC) in Digos City, Branch 19, with Gross Misconduct, Undue Delay in Rendering a Decision or Order and Gross Ignorance of the Law of Procedure relative to the denial of the Motion for Intervention filed by complainant in Civil Case Nos. 3220 and 3387 respectively entitled "*Marina Crisologo, Jr. vs. Victor Callao and Rural Bank of Tagum, Inc*." and "*Salvador Crisologo vs. Marina Crisologo, Jr. and Rural Bank of Tagum, Inc*."

As found by the Report of the Investigating Justice of the Court of Appeals (CA), the following circumstances prompted the complainant to file this administrative complaint:

[1] *Rollo*, pp. 7-34.

On May 23, 1995, Marina Crisologo, Jr. filed a complaint to Declare Documents Null and Void and Set Aside Auction Sale and Attorney's Fees against Victor Callao and the Rural Bank of Tagum, Inc. (RBTI). The case docketed as Civil Case No. 3220 was raffled to RTC-Branch 19 in Digos City.

Afterward, on September 10, 1996, Salvador Crisologo filed an action for Annulment of Real Estate Mortgage, Documents, Reconveyance, Damages and Attorney's Fees against Marina, Jr. and RBTI. The case docketed as Civil Case No. 3387 was raffled to RTC-Branch 19 and consolidated with Civil Case No. 3220.

On January 22, 2004, before trial on the merits can be had in the civil cases, Marina, Jr., Salvador, Victor and RBTI submitted a Compromise Agreement with RTC-Branch 19, which was then presided over in an acting capacity by respondent Judge. In said compromise agreement, Marina, Jr. and Salvador ceded full ownership of the subject land covered by Transfer Certificate of Title (TCT) No. T-22236, including all improvements found thereon, in favor of RBTI.

On February 13, 2004, soon after being informed of the existence of the compromise agreement, complainant Jesus G. Crisologo and his sister Carolina C. Abrina, represented by Atty. Rodolfo Ta-asan, moved to intervene in the civil cases alleging among others that: [a] the property in litigation involves the Crisologo family's ancestral home; [b] they are co-owners of the subject property together with Marina, Jr. and their other siblings; [c] while the subject property is registered in the name of Marina, Jr., she merely holds said property in trust for them and their other siblings; and [d] they seek to intervene in the civil cases to protect their proprietary right and legal interest over the subject property.

Meanwhile, on April 21, 2004, Atty. Ta-asan withdrew his appearance as counsel for complainant and Carolina, and was substituted by Atty. Jenette Marie Crisologo. Atty. Crisologo's entry of appearance was acknowledged by Respondent Judge in an Order dated May 17, 2004.

In an Order dated August 23, 2004, respondent Judge denied complainant's motion for intervention, thus:

> **FOR RESOLUTION** IS THE Motion for Intervention filed by movants-intervenors Jesus G. Crisologo and Carolina C.

Abrina through counsel, seeking permission from this Court to intervene in the cases above-mentioned, so as to protect their proprietary rights and legal interest over the subject property.

AFTER A CAREFUL ASSESSMENT of the instant motion *vis-à-vis* the Comment/Opposition thereto, this Court holds and is of the view that the Motion for Intervention could not be entertained anymore considering that the Compromise Agreement had already been entered into and to allow the intervention will unduly delay the adjudication of the rights of the original parties, particularly so that the instant cases began almost a decade ago in 1995. Moreover, whatever claims and rights that Jesus G. Crisologo may have over the subject property may and should be the subject of a separate case between and among his siblings. (*Magat, et al. vs. Delizo, et al.*, G.R. No. 135199, July 5, 2001)

WHEREFORE, **PREMISES CONSIDERED**, the Motion for Intervention is hereby DENIED.

SO ORDERED.

On September 15, 2004, complainant moved for the reconsideration of the Order dated August 23, 2004, arguing that he is a co-owner of the properties in litigation, and as such, he is an indispensable party whose participation is essential before a final adjudication can be had in the civil cases.

On October 1, 2004, RBTI manifested that complainant's motion for reconsideration does not contain a notice of hearing, hence, a mere scrap of paper.

In an Order dated October 15, 2004, respondent Judge denied complainant's motion for reconsideration for lack of the requisite notice of hearing. However, a copy of the Order dated October 15, 2004 was sent to Atty. Ta-asan instead of Atty. Crisologo who is complainant's counsel of record.

Subsequently, on October 27, 2004, Respondent Judge issued a Decision approving the compromise agreement. The dispositive portion of which reads:

> WHEREFORE, finding the afore-quoted Compromise Agreement to be not contrary to law, public morals, good customs and public policy, this Court hereby APPROVES the same. The parties in this case are hereby ordered to strictly comply with all the terms and conditions set forth in said agreement. By virtue of the approval of the compromise agreement, this case is now deemed **TERMINATED**.
>
> SO ORDERED.

Again, a copy of the decision was sent to Atty. Ta-asan instead of complainant's counsel, Atty. Crisologo. Thus, complainant was left unaware that his motion for reconsideration was denied and that a decision approving the compromise agreement has already been rendered by respondent Judge in the civil cases.

On November 3, 2004, RBTI moved for the execution of the decision on compromise agreement and prayed, among other things, for RTC-Branch 19: [a] to order the immediate ejectment of the plaintiffs, including all other persons claming rights under them, from the subject property; [b] to place RBTI in complete possession, control and enjoyment of the subject property, including all improvements thereon; and [c] to order the cancellation the notice of *lis pendens* in the certificate of title of the subject property.

On November 4, 2004, complainant was informed by his brother Ramon Crisologo, who is one of the occupants of the subject property, about RBTI's motion for execution. Thus, on November 5, 2008, complainant, accompanied by Atty. Crisologo, lost no time and proceeded to RTC-Branch 19 to inquire about the hearing schedule of RBTI's motion for execution, and was surprised to learn that his motion for reconsideration of the denial of his motion for intervention has already been denied and that in fact a decision on compromise agreement has already been rendered by respondent Judge.

Immediately thereafter, on November 8, 2004, complainant filed an Urgent Manifestation and Notice of Appeal decrying the lack of notice to him of the trial court's [October] 15, 2004 Order and appealing the denial of his motion for intervention to the Court of Appeals. On the same date, complainant also filed an Urgent Motion for Voluntary Inhibition of respondent Judge in the civil cases on the ground of lack of impartiality.

On December 7, 2004, when respondent Judge failed to act on his notice of appeal, complainant filed a petition for *certiorari*, prohibition and *mandamus* under Rule 65 of the Rules of Court with the Court of Appeals.

On December 8, 2004, respondent Judge gave due course to complainant's motion for voluntary inhibition and voluntarily inhibited herself in the civil cases, but refrained from acting on complainant's notice of appeal. It was only on March 15, 2005, that complainant's notice of appeal was acted upon by Judge Carmelita Sarno-Dav[i]n, the newly appointed presiding judge of RTC Branch-19.

On July 20, 2006, the Court of Appeals rendered a Decision finding grave abuse of discretion in the denial of complainant's motion for intervention to warrant the issuance of writs of *certiorari* and *mandamus* in favor of complaint.[2]

In her Comment[3] dated October 31, 2006, respondent denied and refuted the charges in the complaint. She contended that the failure to furnish complainant, through his counsel of record, Atty. Jenette Marie Crisologo, with a copy of the Order denying his motion for reconsideration *vis-a-vis* the denial of his motion for intervention, as well as of the decision on the compromise agreement, was unintentional and brought about by an honest oversight on the part of her court personnel, who inadvertently sent copies of the court processes to complainant's previous counsel, Atty. Rodolfo Ta-asan, Jr. Thus, respondent insisted that she could not be made administratively liable for gross misconduct on account of such omission absent a clear showing of bad faith.

Likewise, respondent denounced the charge of undue delay in passing upon complainant's notice of appeal in light of her voluntary inhibition from hearing the civil cases. She pointed out that she could no longer be expected to pass upon complainant's notice of appeal after she had voluntarily inhibited herself.

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[2] Report dated June 12, 2008, pp. 4-10.

[3] *Rollo,* pp. 195-207.

Lastly, respondent asserted that the denial of complainant's motion for intervention was prompted by the prevailing factual circumstances of the civil cases. She reasoned out that while the denial of the motion for intervention was made prior to a rendition of judgment in the civil cases, such denial was proper in view of the Compromise Agreement between the original parties to the case. Respondent insisted that the civil cases had been pending for almost a decade; thus, when presented with a compromise agreement between the original parties, she felt it proper, in the interest of justice, to deny complainant's motion for intervention and promulgate a decision based on said compromise agreement.

Respondent underscored that the administrative case is purely harassment, designed to malign her for denying complainant's motion for intervention.

On November 12, 2007, this Court referred the complaint to the Executive Justice of the CA, Cagayan de Oro City station, for investigation, report and recommendation.[4]

In the Report dated June 12, 2008, the Investigating Justice recommended that respondent be ordered to pay a fine of ₱10,000.00 for undue delay in rendering a decision or order, and ₱20,000.00 for gross ignorance of the law or procedure.

On the failure to furnish the complainant's new counsel of record with copies of the court's processes, the Investigating Justice found that this omission does not amount to gross misconduct. He then recommended that respondent be absolved from administrative liability on this ground.

As for the charge of undue delay in resolving complainant's notice of appeal, the Investigating Justice brushed aside respondent's excuse that she could no longer act on the notice of appeal since she already inhibited herself from the case. The Investigating Justice noted that the notice of appeal was filed simultaneously with the motion for inhibition and that

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[4] *Id.* at 264.

respondent inhibited herself only after complainant filed a petition for *certiorari* with the CA assailing the denial of his motion for intervention. The Investigating Justice opined that respondent's inhibition was a mere afterthought to escape liability for her negligence to act on the notice of appeal.

Finally, the Investigating Justice held that respondent displayed gross ignorance of the rule on intervention in denying complainant's motion for intervention and in ruling that the complainant's interest would be better protected in a separate civil action.

While we concur with the Investigating Justice's finding that respondent is not guilty of gross misconduct, we are not in agreement with his recommendation that respondent be held administratively liable for undue delay in rendering a decision or order and gross ignorance of the law or procedure.

It is settled that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous, as long as he acts in good faith.[5] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[6]

However, the judges' inexcusable failure to observe the basic laws and rules will render them administratively liable. When the law is so simple and elementary, lack of conversance therewith constitutes gross ignorance of the law.[7] In any case, to constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the

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[5] *Maylas, Jr. v. Judge Sese*, A.M. No. RTJ-06-2012, August 4, 2006, 497 SCRA 602, 605.

[6] *Santos v. Judge How*, A.M. No. RTJ-05-1946, January 26, 2007, 513 SCRA 25, 36.

[7] *Enriquez v. Judge Caminade*, A.M. No. RTJ-05-1966, March 21, 2006, 485 SCRA 98, 105.

performance of his official duties is contrary to existing law and jurisprudence but, most importantly, such decision, order or act must be attended by bad faith, fraud, dishonesty, or corruption. Good faith and absence of malice, corrupt motives or improper considerations, are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[8]

The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention.[9]

There is no doubt that respondent was cognizant of the rule on intervention, and she complied with it in good faith. In fact, respondent has explained that she denied the motion for intervention because it would only delay, to the prejudice of the original parties, the civil cases which had already been pending for almost a decade. Respondent maintains that she sincerely believed that the rights of the complainant would be better protected in a separate action. Under the rule on intervention, these are valid considerations in deciding whether or not to grant a motion to intervene. There is no showing that respondent judge was motivated by any ill-will in denying the complainant's motion for intervention; hence, she cannot be sanctioned therefor.

The filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists.[10]

Complainant erroneously thought that when respondent failed to act on his notice of appeal, he lost his right to appeal the court's order denying his motion for intervention and that his

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[8] *Santos v. Judge How, supra* note 6, at 36-37.

[9] *San Miguel Corporation v. Sandiganbayan*, 394 Phil. 608, 651-652 (2000).

[10] *Supra* note 5, at 606.

only remedy was to file a petition for *certiorari* with the CA which he, in fact, filed. He failed to consider that a party's appeal by notice of appeal is deemed perfected as to him, upon the filing of the notice of appeal in due time and upon payment of the docket fees. The notice of appeal does not require the approval of the court. The function of the notice of appeal is merely to notify the trial court that the appellant was availing of the right to appeal, and not to seek the court's permission that he be allowed to pose an appeal.[11]

The trial court's only duty with respect to a timely appeal by notice of appeal is to transmit the original record of the case to the appellate court. The court is given thirty (30) days from the perfection of the appeal within which to transmit the record.[12]

We note, however, that complainant also filed a motion for inhibition on the same day that he filed the notice of appeal. On the 30th day since the notice of appeal was filed, respondent inhibited herself from the case. It goes without saying that from that time on, respondent could no longer perform any act pertaining to the complainant's appeal. That duty would then devolve upon the judge who will replace the respondent. Hence, respondent should not be sanctioned for her failure to act on the notice of appeal after she had inhibited herself from the case.

WHEREFORE, this administrative case against Judge Marivic Trabajo Daray is *DISMISSED.*

SO ORDERED.

Carpio,[*] *Austria-Martinez (Acting Chairperson), Chico-Nazario,* and *Reyes, JJ.,* concur.

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[11] *Victory Liner, Inc. v. Malinias,* G.R. No. 151170, May 29, 2007, 523 SCRA 279, 295.

[12] Rules of Court, Rule 41, Section 12.

[*] Additional member replacing Associate Justice Consuelo Ynares-Santiago per raffle dated August 6, 2008.

FIRST DIVISION

[G.R. No. 141668. August 20, 2008]

IN THE MATTER OF THE CONTEMPT ORDERS AGAINST LT. GEN. JOSE M. CALIMLIM and ATTY. DOMINGO A. DOCTOR, JR.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; PROCEDURE.— In contempt proceedings, the prescribed procedure must be followed. Sections 3 and 4, Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. First, there must be an order requiring the respondent to show cause why he should not be cited for contempt. Second, the respondent must be given the opportunity to comment on the charge against him. Third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly.

2. ID.; ID.; ID.; A CONTEMPT CHARGE PARTAKES OF THE NATURE OF A CRIMINAL PROSECUTION AND FOLLOWS THE PROCEEDINGS SIMILAR TO A CRIMINAL PROSECUTION.— Since a contempt charge partakes of the nature of a criminal prosecution and follows the proceedings similar to criminal prosecution, judges must extend to the alleged contemner the same rights accorded to an accused.

3. ID.; ID.; ID.; INDIRECT CONTEMPT; PENALTY.— Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. Section 7 of Rule 71 reads: "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" Indeed, the Rules do not provide that reprimand and admonition may be imposed on one found guilty of indirect contempt. However, in *Racines v. Judge Morallos*, the Court, after finding Jaime Racines (Racines) guilty of indirect contempt, merely reprimanded Racines

because "he is not learned in the intricacies of law." Therefore, the courts may impose a penalty less than what is provided under the Rules if the circumstances merit such.

4. JUDICIAL ETHICS; JUDGES; POWER TO PUNISH FOR CONTEMPT; HOW EXERCISED.— Judges are reminded that the power to punish for contempt should be used sparingly and only in cases of clear and contumacious refusal to obey should the power be exercised. The power to punish for contempt must also be used with due regard to the provisions of the law and the constitutional rights of the individual.

APPEARANCES OF COUNSEL

Public Interest Law Center for L. Pitao.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 11 December 1999 and 20 January 2000 Orders of Judge Adoracion Cruz-Avisado (Judge Cruz-Avisado), presiding judge of the Regional Trial Court, Branch 9, Davao City (RTC).

The Facts

Leonardo Pitao (Pitao),[2] one of the accused in Criminal Case Nos. 16,342-88 pending before the RTC, was arrested by the Military Intelligence Group XI of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) on 2 November 1999 in Tolomo District, Davao City. For security reasons, Pitao was brought to the ISAFP Detention Cell in Camp Aguinaldo, Quezon City.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Also known as "Commander Parago" and "Commander Farago," Commanding Officer of the Main Regional Guerilla Unit 3 of the New People's Army.

In the Return of Service of Warrant of Arrest,[3] Atty. Domingo A. Doctor, Jr. (Atty. Doctor, Jr.), Chief of the Legal Action Unit of the ISAFP, prayed for the issuance of a Commitment Order authorizing Pitao's continued detention at the ISAFP Detention Cell during the pendency and trial of his case before the RTC. The ISAFP, through Atty. Doctor, Jr., promised to be responsible for producing and bringing Pitao before the RTC on every scheduled hearing of his case.

In an Order[4] dated 4 November 1999, Judge Cruz-Avisado issued the Commitment Order and set Pitao's arraignment on 19 November 1999. Atty. Doctor, Jr. personally received the Order.[5]

On 19 November 1999, Pitao was not able to attend the arraignment. In an Order dated the same day, Judge Cruz-Avisado required Atty. Doctor, Jr. and Lt. Gen. Jose M. Calimlim (Lt. Gen. Calimlim), Chief of the ISAFP, to explain in writing their failure to appear and bring Pitao before the RTC for his scheduled arraignment.[6]

In their Compliance[7] dated 8 December 1999, Atty. Doctor, Jr. and Lt. Gen. Calimlim (petitioners) reiterated that, for security reasons and because of threats on his life, Pitao was brought to the ISAFP Detention Cell in Quezon City, instead of being detained in Davao City. Petitioners explained that on 23 November 1999, they filed before this Court a Petition for Change of Venue[8] from Davao City to Quezon City. Petitioners added that on 1 December 1999, they filed a Manifestation and Motion[9] for a deferment of the proceedings before the RTC until the resolution of the Petition for Change of Venue.

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[3] Records, p. 108.

[4] *Id.* at 111.

[5] *Id.*

[6] *Rollo,* pp. 51-52.

[7] *Id.* at 53-55.

[8] *Id.* at 45-50.

[9] *Id.* at 56-57.

In the 11 December 1999 Order, Judge Cruz-Avisado found the explanation of petitioners "highly unsatisfactory." Judge Cruz-Avisado said that petitioners totally disregarded their commitment to bring Pitao to the RTC for his arraignment and showed an "unwarranted display of arrogance and irresponsibility." Judge Cruz-Avisado also noted that petitioners did not sign the Compliance. The 11 December 1999 Order reads:

> WHEREFORE, Lt. Gen. Jose Calimlim is hereby ADMONISHED to be more responsible and circumspect in his duties and obligations to the Court. Atty. Domingo A. Doctor is hereby REPRIMANDED for not being candid and for taking lightly his commitment to the Court. He must remember that he is not only a military officer but he is likewise a member of the Integrated Bar of the Philippines with the sworn duty to assist in the administration of justice. As officer of the court, he should not make a mockery of its processes.
>
> Let copies of this order be attached to the personnel records of both Lt. Gen. Jose Calimlim and Atty. Domingo Doctor with the Intelligence Service, Armed Forces of the Philippines.
>
> Let copies of this order be furnished the Secretary of the Department of National Defense and the Chief of Staff of the Armed Forces of the Philippines for their information and appropriate action.
>
> Likewise, furnish the Integrated Bar of the Philippines with [a] copy of this order for its information and appropriate action in so far as Atty. Domingo A. Doctor is concerned.
>
> SO ORDERED.[10]

On 15 December 1999, petitioners filed a motion for reconsideration.

In the 20 January 2000 Order, Judge Cruz-Avisado partly granted the motion for reconsideration. The 20 January 2000 Order provides:

> The Court finds that the duly signed verification attached to the Motion for Reconsideration and admission of inadvertence with offer

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[10] *Id.* at 31-32.

of apology by the movants to the Court constitute sufficient compliance of the Order for Explanation issued by the Court last November 19, 1999.

As a continuing reminder to the two officers however, and in order for them to avoid in the future, any other inadvertent lapse regarding their responsibility to the court, the Court finds the need for the earlier order of ADMONITION and REPRIMAND to stay and form part of their personnel record.

WHEREFORE, the offered apology for the incident last November 19, 1999 is hereby duly noted and the apologies offered are accepted. The Motion for Reconsideration is partly GRANTED such that the Compliance by way of Explanation on their failure to bring the accused to Court last November 19, 1999 is now considered satisfactory. However all other aspects of the December 11, 1999 Order of this Court stands.

The prayer raised in open court by Solicitor San Juan to set aside the ADMONITION and REPRIMAND of Lt. Gen. Calimlim is hereby DENIED for lack of merit. The December 11, 1999 Order and this Order should form part of the personnel record of the two (2) military officers herein.

Let [a] copy of this Order be furnished all those served with the December 11, 1999 Order of this Court.

SO ORDERED.[11]

The Issues

Petitioners raise the following issues:

1. Whether petitioners could be burdened with a penalty for indirect contempt other than that provided by the Rules of Court; and
2. Whether the order of admonition and reprimand against petitioners should stay despite a declaration that their explanation as to why they should not be cited for contempt was satisfactory and accepted.

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

The Ruling of the Court

The petition is partly meritorious.

Proper Procedure for Indirect Contempt

In contempt proceedings, the prescribed procedure must be followed.[12] Sections 3[13] and 4,[14] Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. First, there must be an order requiring the respondent to show cause why he should not be cited for contempt. Second, the respondent must be given the opportunity to comment on the charge against him. Third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly.

In this case, Judge Cruz-Avisado failed to observe the proper procedure in the exercise of the power to punish for indirect contempt. First, there can be no indirect contempt absent any prior written charge.[15] In the 19 November 1999 Order, Judge Cruz-Avisado only ordered petitioners to explain their failure to bring Pitao before the RTC for his scheduled arraignment.[16]

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[12] *Nazareno v. Barnes*, G.R. No. 59072, 25 April 1984, 136 SCRA 57.

[13] Section 3, Rule 71 of the Rules of Court 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

[14] Section 4, Rule 71 of the Rules of Court provides:

SEC. 4. *How proceedings commenced*. - 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 the respondent to show cause why he should not be punished for contempt.

[15] *Felizmeña v. Galano*, 216 Phil. 158 (1984).

[16] The 19 November 1999 Order stated that "Pros. Serafica J. Weis moved that both Atty. Domingo A. Doctor, Jr. and Lt. Gen. Jose M. Calimlim

The 19 November 1999 Order did not yet amount to a show-cause order directing petitioners to explain why they should not be cited for indirect contempt. Absent an order specifically requiring petitioners to show cause why they should not be punished for contempt, Judge Cruz-Avisado had no authority to punish petitioners.

Second, if the answer to the contempt charge is satisfactory, the contempt proceedings end.[17] Even if we consider the 19 November 1999 Order sufficient to charge petitioners with indirect contempt, petitioners still could not be punished for contempt because Judge Cruz-Avisado found petitioners' explanation satisfactory. Only in cases of clear and contumacious refusal to obey should the power to punish for contempt be exercised.[18] Absent any finding that petitioners contumaciously refused to comply with the orders of the RTC, Judge Cruz-Avisado had no reason to punish petitioners for indirect contempt.

Lastly, there must be a hearing conducted on the contempt charge. In this case, no hearing was ever conducted. After receiving petitioners' Compliance, Judge Cruz-Avisado immediately issued the 11 December 1999 Order. Petitioners were not afforded full and real opportunity to be heard. Since a contempt charge partakes of the nature of a criminal prosecution and follows the proceedings similar to criminal prosecution,[19] judges must extend to the alleged contemner the same rights accorded to an accused.[20] Judge Cruz-Avisado should have given petitioners their day in court and considered the testimony and evidence petitioners might offer.

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be ordered to explain in writing why they should not be cited for contempt for failure to abide with the Order of this Court dated November 4, 1999."

[17] *Paredes-Garcia v. Court of Appeals,* G.R. No. 120654, 11 September 1996, 261 SCRA 693.

[18] *Gamboa v. Teodoro*, 91 Phil. 270 (1952).

[19] *Santiago v. Anunciacion, Jr.*, G.R. No. 89318, 3 April 1990, 184 SCRA 118.

[20] *Soriano v. Court of Appeals*, G.R. No. 128938, 4 June 2004, 431 SCRA 1.

Proper Penalty for Indirect Contempt

Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. Section 7 of Rule 71 reads:

> 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

Indeed, the Rules do not provide that reprimand and admonition may be imposed on one found guilty of indirect contempt.

However, in *Racines v. Judge Morallos*,[21] the Court, after finding Jaime Racines (Racines) guilty of indirect contempt, merely reprimanded Racines because "he is not learned in the intricacies of law." Therefore, the courts may impose a penalty less than what is provided under the Rules if the circumstances merit such.

In this case, if petitioners were found guilty of indirect contempt, Judge Cruz-Avisado may penalize them with reprimand. However, since the proper procedure for indirect contempt was not followed, Judge Cruz-Avisado's Orders to reprimand Atty. Doctor, Jr. had no legal basis.

On the other hand, admonition is not a penalty but merely a warning.[22] Judge Cruz-Avisado may admonish Lt. Gen. Calimlim for the failure to comply with the RTC's 4 November 1999 Order. Judge Cruz-Avisado may make such admonition even in the absence of contempt proceedings.

Judges are reminded that the power to punish for contempt should be used sparingly and only in cases of clear and contumacious refusal to obey should the power be exercised.[23] The power to punish for contempt must also be used with due

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[21] A.M. MTJ-08-1698, 3 March 2008.

[22] *Tobias v. Veloso*, 188 Phil. 267 (1980).

[23] *Pacuribot v. Judge Lim*, 341 Phil. 544 (1997).

regard to the provisions of the law and the constitutional rights of the individual.[24]

WHEREFORE, we *GRANT* in part the petition. We *SET ASIDE* the 11 December 1999 and 20 January 2000 Orders of Judge Adoracion Cruz-Avisado reprimanding Atty. Domingo A. Doctor, Jr.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 145408. August 20, 2008]

CALIFORNIA BUS LINES, INC., *petitioner, vs.* **COURT OF APPEALS, HON. PRISCILLA C. MIJARES, in her Capacity as Presiding Judge of the Regional Trial Court of Pasay City, Branch 108, SP Civil Action No. 98-2004, HON. MARIA A. CANCINO-ERUM, in her capacity as Presiding Judge of Metropolitan Trial Court of Pasay City, Branch 46, Civil Case No. 127-93, SHERIFF RONNIE LAMPITOC, and MANILA INTERNATIONAL AIRPORT AUTHORITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES.— For a special civil action on *certiorari* to

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[24] *Paredes-Garcia v. Court of Appeals, supra* note 17.

prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The party aggrieved by a decision of the CA is proscribed from assailing the decision or final order of said court *via* Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law.

2. ID.; ID.; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; DECISIONS, FINAL ORDERS OR RESOLUTIONS OF THE COURT OF APPEALS IN ANY CASE MAY BE APPEALED TO THE SUPREME COURT BY FILING A PETITION FOR REVIEW.— Rule 45 of the Rules of Court is clear that decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to the Supreme Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.

3. ID.; ID.; EXECUTION OF JUDGMENTS; TIME FOR SUING OUT AN EXECUTION, HOW COMPUTED.— The Court previously had the occasion to rule that in computing the time for suing out an execution, the time during which the execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor. In cases where the delays were occasioned by the judgment obligor's own initiatives and for his advantage, which were beyond the judgment obligee's control, the five (5)-year period allowed for enforcement of the judgment by motion was deemed to have been effectively interrupted or suspended.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLES OF AUTONOMY AND OBLIGATORY NATURE OF CONTRACTS, APPLIED IN CASE AT BAR.— The present controversy sprung from an ejectment suit initiated on May 20, 1993 during the effectivity of the 1991 Revised Rules of Summary Procedure. The belated argument of CBL raised for

the first time in its memorandum filed with this Court that this involves a case for collection of sum of money, not an unlawful detainer, and therefore is outside the jurisdiction of the MTC and the coverage of the Rules of Summary Procedure deserves scant consideration. With regard to the attorney's fees in the amount of One Million Pesos (₱1,000,000.00) that was awarded by the MTC in the challenged *Alias* Writ of Execution, dated January 13, 1998, CBL asserts that the amount of said fees was not only unconscionable and unreasonable but beyond the MTC's jurisdiction. CBL also underscores the fact that the dispositive portion of the July 30, 1993 MTC Decision has awarded attorney's fees only in the amount of ₱20,000.00 which is the maximum monetary limit that an MTC can award in cases under its jurisdiction, pursuant to Section 1(A), Paragraph 1 of the aforestated rules. CBL ignored the fact that the increase in the award of attorney's fees was occasioned by no less than its consent to the Compromise Agreement which was executed by both parties on November 3, 1993, approved by the MTC upon motion of the parties with assistance of counsel, in its December 13, 1993 decision and partially complied with by the said parties. MIAA's counsel, the OGCC, is legally authorized to receive payment of attorney's fees by virtue of Section 10, Chapter 3, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987. There is likewise no jurisdictional impediment if the MTC awards the amount of One Million Pesos (₱1,000,000.00) as attorney's fees despite the Twenty Thousand Pesos (₱20,000.00) limit provided under the applicable rules. As we see it, the foregoing jurisdictional amount of ₱20,000.00 is mandated only when the trial court itself awards the attorney's fees absent any valid stipulation between the parties relative thereto. To our mind, a contrary interpretation would counter the principles of freedom of the parties to enter into any kind of contract they choose and to establish such stipulations, clauses, terms and conditions as they may deem convenient, subject only to basic limitations as provided under Article 1306 of the Civil Code. x x x To be sure, the Civil Code implements the autonomy and obligatory nature of contracts, guaranteed by Article III, Section 10 of the Constitution. The amount of attorney's fees agreed upon in the Compromise Agreement is not determinative of jurisdiction in this ejectment suit. Such amount is merely incidental to the main question of whether or not CBL should be allowed to continue its occupancy

of MIAA's property. The trial court's jurisdiction is perforce not lost by the fact that the amount of attorney's fees agreed upon is beyond the limit set by the Rules.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; HOW PROCEEDINGS COMMENCED.— [A] charge of indirect contempt must be filed in the form of a verified petition instituted as a special civil action if it is not initiated directly by the court.

6. ID.; ID.; JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL, EXECUTORY AND UNAPPEALABLE, THE PREVAILING PARTY SHOULD NOT BE DENIED THE FRUITS OF HIS VICTORY.— Litigation must at some time be terminated for public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.

Office of the Government Corporate Counsel for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Petitioner California Bus Lines, Inc. (CBL) filed this Petition for *Certiorari* under Rule 65 of the Rules of Court with application for writ of preliminary injunction and prayer for temporary restraining order to prohibit public respondent Judge PRISCILLA C. MIJARES (JUDGE MIJARES), Regional Trial Court (RTC), Branch 108, and public respondent Judge MARIA A. CANCINO-ERUM (JUDGE ERUM), Metropolitan Trial Court (MTC) of Pasay City, Branch 46, from implementing the *Alias* Writ of Execution, dated January 13, 1998, in *Civil Case No. 127-93*, and private respondent MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA) and its officers, directors, agents and representatives from implementing and enforcing said writ while the instant petition

is pending before this Court. The petition seeks the nullification of (1) the Resolution[1] dated August 22, 2000, and the Resolution[2] dated October 11, 2000, both issued by the Court of Appeals (CA), in relation to its Decision[3] in *CA-G.R. Sp. No. 51664*, entitled *California Bus Line, Inc. v. Hon. Priscilla C. Mijares, et al.*; (2) the *Alias* Writ of Execution[4], dated January 13, 1998, issued by the Pasay City MTC, Branch 46 in *Civil Case No. 127-93*, entitled *Manila International Airport Authority v. California Bus Lines, Inc.*; and (3) the Compromise Agreement[5], dated November 3, 1993, which was the subject of the aforementioned *Alias* Writ of Execution. Furthermore, the petition also prays that judgment be rendered making the preliminary injunction permanent.

The factual antecedents of this case are as follows:

On May 20, 1993, MIAA filed a civil action for ejectment, docketed as *Civil Case No. 127-93*, against CBL with the Pasay City MTC, Branch 46. The MTC rendered a decision[6], dated July 30, 1993, in favor of MIAA, and ordered CBL to vacate the leased premises and to pay rental in arrears, attorney's fees and costs. The dispositive portion of the said decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering the defendant and all other persons/parties claiming possession under it to vacate and surrender to the plaintiff the premises known as, *California Bus Lines, Inc.* Bus Terminal located at Domestic Road, MIA, Pasay City;

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[1] *Rollo*, pp. 21-24.

[2] *Id.*, at pp. 25-27.

[3] Penned by Associate Justice Eugenio S. Labitoria Dacudao (ret.), with Associate Justices Marina L. Buzon (ret) and Edgar P. Cruz (ret.) concurring, *id.*, at pp. 95-103.

[4] *Id.*, at pp. 28-30.

[5] *Id.*, at pp. 32-35.

[6] *Id.*, at pp. 36-49.

2. Ordering the defendant to pay the amount of ₱27,017,295.95 as rentals in legal arrears, interest, penalties and other charges;

3. Ordering the defendant to pay the sum of ₱430,462.60 a month commencing February, 1993 as reasonable rentals on the premises with interest at a legal rate until such time defendant and all other parties claiming under it shall have finally vacated the premises;

4. Ordering the defendant to pay the sum of ₱20,000.00 for and as attorney's fees;

5. Ordering the defendant to pay the costs of the suit.

Defendant's counterclaim is hereby dismissed for lack of merit."

The MTC decision became final and executory for failure of CBL to appeal the same. Thus, MIAA filed a Motion for the Issuance of Writ of Execution dated August 2, 1993 which was granted on August 9, 1993.

On November 3, 1993, the parties entered into a Compromise Agreement[7] which was approved by the MTC in the decision[8] dated December 13, 1993, the dispositive portion of which reads:

"WHEREFORE, finding said Compromise Agreement to be in accordance with law and not contrary to public policy, the same is hereby approved and judgment is hereby rendered in consonance thereto and the parties are enjoined to follow the terms and conditions thereof."

However, CBL failed to comply with the terms and conditions of the Compromise Agreement. Hence, MIAA filed a Motion for Issuance of Writ of Execution, which was granted by the MTC on February 10, 1994.[9] The properties of CBL were levied upon by the MTC Sheriff but this levy was subsequently lifted when CBL issued postdated checks to secure payment of the debt pursuant to the Compromise Agreement.[10]

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[7] *Id.*, at pp. 32-35.

[8] *Id.*, at pp. 106-108.

[9] *Id.*, at pp. 109-112.

[10] *Id.*, at p. 97.

Again, CBL failed to comply with the schedule of payment stipulated in the Compromise Agreement prompting MIAA to file a Motion for the Issuance of *Alias* Writ of Execution.[11] This was granted by the MTC on December 12, 1997 and the assailed *Alias* Writ of Execution was issued on January 13, 1998.[12]

In reaction to the issuance of the aforementioned writ, CBL filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Civil Procedure with the Pasay City RTC, Branch 108.

In the RTC, CBL insisted that the *alias* writ of execution was issued by the MTC with grave abuse of discretion amounting to lack of jurisdiction. CBL argued that the decision dated July 30, 1993 of the MTC had already attained finality; that CBL overpaid the same by seven million pesos; and that the Compromise Agreement is void because it was entered into in its behalf by a person not authorized to do so and because it was entered into after the finality of the decision dated July 30, 1993 of the MTC.[13]

The RTC dismissed the petition which prompted CBL to file a Petition for Review on *Certiorari* under Rule 42 with the CA. While the said petition was pending before the CA, MIAA filed another Motion for Issuance of *Alias* Writ of Execution with Notice of Change of Address[14] dated June 30, 1999.

On August 23, 1999, the CA rendered a Decision[15] dismissing CBL's petition. CBL filed a motion for reconsideration but the same was denied for lack of merit in the Resolution[16] dated October 19, 1999.

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[11] *Id.*, at pp. 112-114.

[12] *Supra* note 4.

[13] *Rollo*, p. 97.

[14] *Id.*, at pp. 64-66.

[15] *Supra* note 3.

[16] *Rollo*, p. 104.

Unperturbed, CBL filed an Urgent Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction which the CA denied in its subsequent Resolution[17] dated August 22, 2000. Petitioner also filed a Motion to Set Aside Entry of Judgment which the CA likewise denied via the Resolution[18] dated October 11, 2000.

CBL is now before us, via this special civil action under Rule 65 of the Revised Rules of Court with application for writ of preliminary injunction and prayer for temporary restraining order.[19]

In the Resolution[20] dated November 20, 2000, the Court denied the petition for "failure of the petition to sufficiently show that any grave abuse of discretion was committed by the CA in rendering the challenged resolutions which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence."

Undeterred, CBL filed a Motion for Reconsideration[21] on December 22, 2000 raising the following issues:

I.

THE COMPROMISE AGREEMENT ENTERED INTO BY THE PARTIES SUBSTANTIALLY ALTERED THE JUDGMENT DATED JULY 30, 1993, HENCE THE WRIT OF EXECUTION BASED ON THE COMPROMISE AGREEMENT WAS NULL AND VOID.

II.

THE MOTION FOR AN *ALIAS* WRIT OF EXECUTION WHICH WAS FILED AFTER MORE THAN FIVE (5) YEARS FROM THE FINALITY OF JUDGMENT HAD ALREADY PRESCRIBED.

III.

THE AWARD OF ONE MILLION PESOS (₱1,000,000.00) AS ATTORNEY'S FEE IS UNCONSCIONABLE.

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[17] *Supra* note 1.

[18] *Supra* note 2.

[19] *Rollo,* pp. 3-50.

[20] *Id.*, at p. 51.

[21] *Id.,* at pp. 52-69.

In the Resolution[22] dated June 20, 2001, the Court granted CBL's motion for reconsideration and reinstated its petition, which was later on given due course in the Resolution[23] dated September 17, 2001. Both parties had since then filed their respective memoranda.

On December 18, 2007, MIAA filed a Manifestation with Fifth (5th) Motion for Early Resolution[24] informing the Court that on October 2, 2007, CBL filed a Petition for Voluntary Insolvency before the Pasay City RTC, Branch 117, which declared CBL insolvent on October 15, 2007 and that MIAA filed its Notice of Claim thereat.

We resolve to dismiss the petition.

At the outset, private respondent questioned the appropriateness of the instant petition as a remedy to review the assailed CA decision and resolution. MIAA argues that the petition for review under Rule 42 was filed by CBL with the CA pursuant to its appellate jurisdiction over the final Orders of the RTC. Therefore, the assailed Decision and its related Resolutions of the CA which are considered the judgment and final order of the CA should have been elevated before this Court through an appeal by *certiorari* under Rule 45 and not through a special civil action under Rule 65.

CBL maintains that the herein petition is not based on the ground of error of judgment or errors of law which are the proper subject matter of ordinary appeal under Rule 45. Instead, it claims that the same is based on lack or excess of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction, which is the issue to be resolved under Rule 65. According to CBL, the MTC exceeded its jurisdiction in issuing the challenged *Alias* Writ of Execution and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of

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[22] *Id.*, at pp. 157-158.

[23] *Id.*, at pp. 188-189.

[24] *Id.*, at pp. 324-327.

law. Additionally, CBL maintains that the CA acted with grave abuse of discretion amounting to lack of jurisdiction in rendering its decision and in issuing the two (2) assailed Resolutions dated August 22, 2000 and October 11, 2000, which denied respectively CBL's Urgent Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction and Motion to Set Aside Entry of Judgment.

For a special civil action on *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[25] The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.[26] The party aggrieved by a decision of the CA is proscribed from assailing the decision or final order of said court *via* Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law.[27]

Here, it is apparent that CBL's immediate issue is with the CA's Decision and its related Resolutions which denied CBL's erroneously filed petition for review under Rule 42 against the RTC which earlier denied CBL's petition for *certiorari* under Rule 65 against the MTC. The proper remedy for CBL in this situation, as correctly pointed out by the CA, should have been an ordinary appeal to the CA since the RTC decision was made

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[25] *Triad Security & Allied Services, Inc. v. Ortega, Jr.*, 481 SCRA 591; *Joson III v. Court of Appeals*, 482 SCRA 360; and *Soriano v. Marcelo*, 507 SCRA 571.

[26] *Cathay Pacific Steel Corporation v. Court of Appeals*, 500 SCRA 226.

[27] *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, 487 SCRA 78.

in the exercise of the RTC's original jurisdiction.

Moreover, Rule 45 of the Rules of Court is clear that decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to the Supreme Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[28] Thus, contrary to CBL's assertions, it has a plain, speedy and adequate remedy in the course of law.

Even if we assume for the sake of argument that the instant petition is proper, the petition still fails to persuade as regards the remaining issues.

CBL contends that when the Compromise Agreement was approved by the MTC, its earlier decision dated July 30, 1993 was already final and executory. Thus, the Compromise Agreement substantially altered the July 30, 1993 MTC decision, and the subsequent application for an *Alias* Writ of Execution after more than seven (7) years cannot be entertained since "it is fundamental that a final and executory decision cannot be amended or corrected except for clerical errors or mistakes."[29]

The argument is specious. As correctly emphasized by the CA in its Decision,[30] "it is also well-settled that the court is authorized to modify or alter a judgment after the same has become executory, whenever the circumstances transpire rendering its execution unjust and equitable."[31] The Compromise Agreement, thus, explicitly justified the amicable settlement reached by the parties after "having seriously considered in all

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[28] *Davao Merchant Marine Academy v. Court of Appeals*, 487 SCRA 396.

[29] *Yu v. National Labor Relations Commission,* 245 SCRA 134.

[30] *Supra* note 3.

[31] *Aboitiz Shipping Employees Asso. v. Trajano*, 278 SCRA 387 and *Cabrias v. Adil*, 135 SCRA 354.

good faith, the financial position and the capacity of the defendant CBL to fulfill its obligation under the decision promulgated in this case and cognizant over the fate of almost seven hundred employees and the riding public in the event the decision is executed…".

The parties voluntarily entered into the Compromise Agreement which accorded to each party mutually acceptable concessions. MIAA agreed that the obligation of CBL be paid in installments in accordance with a schedule of installments disputed by the parties and CBL was allowed to stay in the leased premises provided the rentals mentioned in the Agreement are paid. Furthermore, the parties themselves invoked the jurisdiction of the MTC by submitting with the assistance of their counsel the Compromise Agreement for approval after the July 30, 1993 MTC decision has become final and executory.

Considering the foregoing circumstance, it would be highly inequitable to rule that the MTC has no jurisdiction to amend the final and executory July 30, 1993 MTC decision, when the MTC decision of December 13, 1993, approving the Compromise Agreement, was rendered at the instance of both CBL and MIAA and for their mutual benefit.

Moreover, CBL had complied with the terms of said Compromise Agreement for a period of five (5) years from its execution on November 3, 1993 until November 1998. CBL cannot question the MTC decision based on said Compromise Agreement and insist upon the execution of the July 30, 1993 MTC decision without trifling with court processes. Accordingly, we find the December 13, 1993 MTC decision, based on the Compromise Agreement, to be valid and binding upon the parties thereto.

Having upheld the validity and binding effect of the December 13, 1993 MTC decision, MIAA was well within the five-year

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[32] *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred

reglementary period dictated by Section 6, Rule 39 of the Rules of Court[32] when it filed its first Motion for the Issuance of a Writ of Execution of the said decision on February 3, 1994 due to CBL's non-compliance with the terms of the Compromise Agreement. This resulted in the issuance of the Writ of Execution dated February 10, 1994. A levy on CBL's property was made but this was later on lifted when the latter issued postdated checks to secure payment of its monetary obligation under the Compromise Agreement. Subsequently, CBL failed again to pay the outstanding balance of its obligation. MIAA filed another Motion for the Issuance of *Alias* Writ of Execution on January 31, 1996, which led to the issuance of the *Alias* Writ of Execution dated January 13, 1998. However, the same was not enforced up to this day.

MIAA correctly contend that CBL's dilatory tactics and legal maneuverings to evade payment of its obligations suspended the running of the five-year reglementary period within which to enforce the judgment by motion. The Court previously had the occasion to rule that in computing the time for suing out an execution, the time during which the execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor.[33] In cases where the delays were occasioned by the judgment obligor's own initiatives and for his advantage, which were beyond the judgment obligee's control, the five (5) - year period allowed for enforcement of the judgment by motion was deemed to have been effectively interrupted or suspended.[34]

Here, CBL made several acts that constituted delay which redounded to its benefit. The judgment based on the Compromise

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by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. *(Section 6, Rule 39, Rules of Court.)*

[33] *Blouse Potenciano v. Mariano*, 96 SCRA 463, 464 and *De la Rosa v. Fernandez*, 172 SCRA 371.

[34] *Camacho v. Court of Appeals*, 287 SCRA 611.

Agreement was promulgated on December 13, 1993. It became final and executory because CBL did not appeal therefrom. The first writ of execution issued on February 10, 1994 was stalled because CBL issued postdated checks as security for its outstanding obligation. The second writ of execution issued on January 13, 1998 was likewise never enforced because CBL filed a petition for *certiorari* under Rule 65 with the RTC and, subsequently after being rebuffed by the said trial court, an erroneous remedy of petition for review under Rule 42 was filed by CBL with the CA which likewise dismissed the said petition. The latter development occasioned the filing of CBL's present petition under Rule 65.

Undoubtedly, CBL was benefited by the continued deferment of the payment of its long-established outstanding balance of its monetary obligation to MIAA due to its incessant but futile resort to the review processes of our justice system. CBL successfully evaded the payment of its debt under the shield of technicalities, at the expense of MIAA.

The assailed *Alias* Writ of Execution dated January 13, 1998 was validly issued by the RTC and is still enforceable because the prescriptive period by which it can be enforced by motion has been effectively suspended beginning November 23, 1998 when CBL filed with the RTC its petition for *certiorari* under Rule 65.[35]

The purpose of the law in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights. Far from sleeping on their rights, MIAA persistently pursued their rights of action. It is utterly unjust to allow CBL to further evade the satisfaction of its obligation because of sheer literal adherence to technicality, which CBL itself had put aside to serve its own interest, the well-being of its employees and the interest of the riding public. After all, procedural rules are liberally construed in order to promote

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[35] CA Records, pp. 103-108.

[36] *Radiowealth Finance Company v. Del Rosario*, 335 SCRA 288.

their objective and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.[36]

As stated at the threshold, the present controversy sprung from an ejectment suit initiated on May 20, 1993 during the effectivity of the 1991 Revised Rules of Summary Procedure. The belated argument of CBL raised for the first time in its memorandum filed with this Court that this involves a case for collection of sum of money, not an unlawful detainer, and therefore is outside the jurisdiction of the MTC and the coverage of the Rules of Summary Procedure deserves scant consideration.

With regard to the attorney's fees in the amount of One Million Pesos (₱1,000,000.00) that was awarded by the MTC in the challenged *Alias* Writ of Execution, dated January 13, 1998, CBL asserts that the amount of said fees was not only unconscionable and unreasonable but beyond the MTC's jurisdiction. CBL also underscores the fact that the dispositive portion of the July 30, 1993 MTC Decision has awarded attorney's fees only in the amount of ₱20,000.00 which is the maximum monetary limit that an MTC can award in cases under its jurisdiction, pursuant to Section 1(A), Paragraph 1[37] of the aforestated rules.

CBL ignored the fact that the increase in the award of attorney's fees was occasioned by no less than its consent to the Compromise Agreement which was executed by both parties on November 3, 1993, approved by the MTC upon motion of the parties with assistance of counsel, in its December 13, 1993 decision and partially complied with by the said parties.

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[37] Sec. 1. Scope. - This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

A. Civil Cases:

(1) All cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. Where attorney's fees are awarded, the same shall not exceed twenty thousand pesos (₱20,000.00).

MIAA's counsel, the OGCC, is legally authorized to receive payment of attorney's fees by virtue of Section 10, Chapter 3, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987.[38] There is likewise no jurisdictional impediment if the MTC awards the amount of One Million Pesos (₱1,000,000.00) as attorney's fees despite the Twenty Thousand Pesos (₱20,000.00) limit provided under the applicable rules.

As we see it, the foregoing jurisdictional amount of ₱20,000.00 is mandated only when the trial court itself awards the attorney's fees absent any valid stipulation between the parties relative thereto. To our mind, a contrary interpretation would counter the principles of freedom of the parties to enter into any kind of contract they choose and to establish such stipulations, clauses, terms and conditions as they may deem convenient, subject only to basic limitations as provided under Article 1306 of the Civil Code:

> Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

To be sure, the Civil Code implements the autonomy and obligatory nature of contracts,[39] guaranteed by Article III, Section 10 of the Constitution.

The amount of attorney's fees agreed upon in the Compromise Agreement is not determinative of jurisdiction in this ejectment suit. Such amount is merely incidental to the main question of whether or not CBL should be allowed to continue its occupancy of MIAA's property. The trial court's jurisdiction is perforce

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[38] Sec.10-xxx The OGCC is authorized to receive attorney's fees adjudged in favor of their client government-owned or controlled corporations, their subsidiaries/other corporate offsprings and government acquired asset corporation. xxx.

[39] Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

not lost by the fact that the amount of attorney's fees agreed upon is beyond the limit set by the Rules.

We now rule on CBL's Urgent Motion for Contempt against MIAA's counsel in connection with the filing of an Urgent Motion for the Issuance of Alias Writ of Execution[40] with the MTC while the instant petition is still pending with this Court which CBL posits as violative of paragraphs (c) and (d) of Section 3, Rule 71 of the 1997 Revised Rules on Civil Procedure.[41]

Under the second paragraph of Section 4 of the same Rule, a charge of indirect contempt must be filed in the form of a verified petition instituted as a special civil action if it is not initiated directly by the court.[42] Section 4 of Rule 71 reads:

How proceedings commenced. – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true

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[40] *Rollo*, pp. 284-292.

[41] *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

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(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.

(paragraphs [c] & [d], Section 3, Rule 71, 1997 Revised Rules of Civil Procedure)

[42] *Sesbreño v. Igonia*, 480 SCRA 243.

copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charges and the principal action for joint hearing and decision.

For failure to comply with the requirement set by the aforequoted Rule, the Court is constrained to take no action on CBL's motion for contempt.

It is high time to write finis to this case. Litigation must at some time be terminated for public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.

The Court finds CBL's obstinate efforts to stay the execution of a valid judgment as an unjustifiable use of the processes of our legal system. CBL and counsel so far only succeeded in unduly delaying the complete execution of the judgment based on the Compromise Agreement to which it had voluntarily acceded.

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

Costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 150768. August 20, 2008]

HEIRS OF MAMERTO MANGUIAT, represented by GERARDO MANGUIAT; HEIRS OF FELIPE MARUDO, represented by JOSE MARUDO; HEIRS OF JULIANA MAILON, represented by GAVINA MAILON MENDOZA; HEIRS OF LEONCIA MERCADO, represented by ANIANA MANGUIAT; HEIRS OF VICENTE PEREZ, represented by SOTERO PEREZ; HEIRS OF VICENTE GARCIA, represented by MACARIO GARCIA LUCIDO; and HEIRS OF TRANQUILINA MENDOZA, represented by RUFINA MENDOZA, *petitioners, vs.* **THE HON. COURT OF APPEALS and J.A. DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 160176. August 20, 2008]

HEIRS OF MAMERTO MANGUIAT, represented by GERARDO MANGUIAT; HEIRS OF FELIPE MARUDO, represented by JOSE MARUDO; HEIRS OF JULIANA MAILON, represented by GAVINA MAILON MENDOZA; HEIRS OF LEONCIA MERCADO, represented by ANIANA MANGUIAT; HEIRS OF VICENTE PEREZ, represented by SOTERO PEREZ; HEIRS OF VICENTE GARCIA, represented by MACARIO GARCIA LUCIDO; and HEIRS OF TRANQUILINA MENDOZA, represented by RUFINA MENDOZA, *petitioners, vs.* **THE HON. COURT OF APPEALS and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; MUST BE SERVED UPON A PARTY FOR VALID JUDGMENT TO BE RENDERED AGAINST HIM.— Summons must be served upon

a party for valid judgment to be rendered against him. This not only comports with basic procedural law but the constitutional postulate of due process. The disputable presumption that an official duty has been regularly performed will not apply where it is patent from the sheriff's or server's return that it is defective.

2. ID.; ID.; ID.; SERVICE UPON PUBLIC CORPORATIONS; SERVICE OF SUMMONS MUST BE MADE ON THE SOLICITOR GENERAL WHEN THE DEFENDANT IS THE REPUBLIC OF THE PHILIPPINES.— It is clear under the Rules that where the defendant is the Republic of the Philippines, service of summons must be made on the Solicitor General. The BUTEL is an agency attached to the Department of Transportation and Communications created under E.O. No. 546 on July 23, 1979, and is in charge of providing telecommunication facilities, including telephone systems to government offices. It also provides its services to augment limited or inadequate existing similar private communication facilities. It extends its services to areas where no communication facilities exist yet; and assists the private sector engaged in telecommunication services by providing and maintaining backbone telecommunication network. It is indisputably part of the Republic, and summons should have been served on the Solicitor General.

3. ID.; ID.; ID.; ID.; ID.; SUMMONS NOT CONSIDERED PROPERLY SERVED UPON THE PUBLIC CORPORATION WHERE THE SAME WAS SERVED ON AN ORDINARY EMPLOYEE THEREOF AND NOT ON THE SOLICITOR GENERAL.— It is incumbent upon the party alleging that summons was validly served to prove that all requirements were met in the service thereof. We find that this burden was not discharged by the petitioners. The records show that the sheriff served summons on an **ordinary employee** and not on the Solicitor General. Consequently, the trial court acquired no jurisdiction over BUTEL, and all proceedings therein are null and void.

4. ID.; ID.; JUDGMENTS; DEFAULT JUDGMENT; THE TRIAL COURT HAS NO AUTHORITY TO DIVIDE THE CASE BEFORE IT BY FIRST HEARING IT *EX PARTE* AS AGAINST THE DEFAULTED DEFENDANT AND RENDERING A DEFAULT JUDGMENT AGAINST IT, THEN PROCEEDING TO HEAR THE CASE, AS TO THE NON-DEFAULTED DEFENDANT.—

Further, we likewise affirm the decision of the Court of Appeals in CA-G.R. SP No. 60770, setting aside the partial decision of the trial court for having been issued with grave abuse of discretion. It ruled that when the trial court declared the BUTEL in default, allowed petitioners to present their evidence *ex parte* and rendered a partial decision holding that petitioners are the owners of the subject property, such was tantamount to prejudging the case against respondent JDC. The trial court ruled that petitioners validly acquired the subject parcel of land without any consideration of the evidence that respondent JDC may present to substantiate its claim of ownership over its aliquot part of the subject property. The trial court should have followed the Rules of Court in this situation. Sec. 3(c) of Rule 9 states that "when a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented." Therefore, the answer filed by a defendant inure to the benefit of all the defendants, defaulted or not, and all of them share a common fate in the action. It is not within the authority of the trial court to divide the case before it by first hearing it *ex parte* as against the defaulted defendant and rendering a default judgment (in the instant case, partial decision) against it, then proceeding to hear the case, as to the non-defaulted defendant. This deprives the defaulted defendant of due process as it is denied the benefit of the answer and the evidence which could have been presented by its non-defaulted co-defendant.

APPEARANCES OF COUNSEL

Felino M. Ganal and *Angeles & Associates* for petitioners.
Tan & Concepcion and *Martinez & Mendoza* for JADC.

D E C I S I O N

PUNO, *C.J.*:

Before us are two petitions for review on *certiorari* assailing the Decisions of the Court of Appeals in CA-G.R. SP No. 60770 and CA-G.R. SP No. 61703 dated August 29, 2001

and January 22, 2003, respectively, and their Resolutions dated November 16, 2001 and September 29, 2003, respectively. In both cases, the Court of Appeals set aside the partial decision of the Regional Trial Court of Tagaytay City, dated February 18, 2000, in Civil Case No. TG-1904.

The facts show that petitioners filed a complaint against respondent J.A. Development Corporation (JDC), Bureau of Telecommunications (BUTEL), Juan dela Cruz, and Pedro dela Cruz on May 14, 1999 with the Regional Trial Court of Tagaytay City. The complaint, docketed as Civil Case No. TG-1904, was for quieting of title and cancellation of certificates of title over Lot 1993, commonly known as the "Calamba Estate." Petitioners alleged that they succeeded to the rights of their predecessors-in-interest to whom Lot 1993 was awarded on November 13, 1914 by virtue of a Sales Certificate, in accordance with the provisions of the Friar Land Act. Petitioners, thus, sought to annul the Torrens title issued to respondent, BUTEL, Juan dela Cruz, and Pedro dela Cruz.

On May 19, 1999, summons was served on respondent JDC through its employee, Jacqueline de los Santos.[1] On the same date, summons was served on BUTEL through a certain employee, Cholito Anitola.[2] The sheriff's return did not describe the position of Mr. Anitola at BUTEL.[3]

Respondent JDC moved to dismiss the complaint on the following grounds: (1) lack of jurisdiction of the court over the subject matter of the case; (2) lack of cause of action; (3) prescription; and (4) improper venue.[4] With leave of court, it supplemented its motion by raising the additional ground of *res judicata* citing the judgment of the same court in Civil Case No. TG-1516. It contended that Civil Case Nos. TG-1904 and

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[1] *Rollo*, G.R. No. 160176, p. 61.

[2] *Id.* at 60-61.

[3] *Ibid.*

[4] RTC Records, Civil Case No. TG-1904, p. 19.

TG-1516 have identical parties and causes of action, and that the order of dismissal of the latter case has long become final due to prescription, and laches has long set in.[5] The motion to dismiss was denied on January 11, 2000.[6] JDC filed a motion for reconsideration which, to date, has not been resolved.

On July 1, 1999, petitioners moved to have BUTEL declared in default for its failure to file an answer despite service of summons and to allow them to present their evidence *ex parte*.[7] The motion was granted on November 10, 1999.[8] A week later, the petitioners presented their evidence before the branch clerk of court acting as commissioner.

On February 18, 2000, the trial court promulgated a partial decision against BUTEL, the dispositive portion of which states:

> PREMISES CONSIDERED, this Court found and hold (sic) that the plaintiffs were able to prove satisfactorily and convincingly their allegations in the complaint as against defendant Bureau of Telecommunication[s].
>
> WHEREFORE, partial decision is hereby rendered:
>
> a. Declaring that (sic) the plaintiffs as the equitable owner of Lot 1993-I and transfer certificate of title covering the same is hereby ordered cancelled as null and void;
>
> b. Ordering the transfer of possession of said Lot 1993-I to the plaintiffs;
>
> c. Enjoining the defendant Bureau of Telecommunication[s], its representative, agents or privies to remove any improvements they have on Lot 1993-I."[9]

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[5] *Id.* at 92-98.

[6] *Rollo*, G.R. No. 160176, p. 213.

[7] *Rollo*, G.R. No. 150768, p. 62.

[8] *Id.* at 64.

[9] *Id.* at 59, 277.

On March 28, 2000, petitioners filed a motion to execute. On April 7, 2000, respondent JDC moved to set aside the partial decision, arguing in the main that the decision constitutes a prejudgment of the merits of the entire case.[10] On July 17, 2000, the trial court denied the motion.[11] On August 25, 2000, respondent filed a motion for reconsideration of the order.[12] On August 8, 2000, the trial court ordered the issuance of a writ of execution.

On September 15, 2000, respondent JDC filed a petition for *certiorari* and prohibition with the Court of Appeals to annul: (1) the partial decision dated February 18, 2000; (2) the order dated July 17, 2000; and (3) the writ of execution dated August 8, 2000.[13] The petition was raffled to the Fifteenth Division of the appellate court and docketed as CA-G.R. SP No. 60770.

On October 31, 2000, the Republic of the Philippines, through the Office of the Solicitor General, filed a petition for Annulment of Judgment with the Court of Appeals docketed as CA-G.R. SP No. 61703, and raffled to its Ninth Division.[14] It sought the nullification of the partial decision dated February 18, 2000 on the ground of lack of jurisdiction. It alleged that the service of summons made on BUTEL was not valid as it was not made upon the Solicitor General who is its statutory counsel and representative.

On August 29, 2001, the Fifteenth Division of the Court of Appeals promulgated its decision granting the petition of respondent JDC. The dispositive portion states:

WHEREFORE, it is hereby resolved that the (sic): (a) the Partial Decision dated 18 February 2000; (b) the Order dated 17 July 2000;

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[10] *Rollo*, G.R. No. 160176, p. 231.

[11] *Id.* at 240.

[12] *Id.* at 242.

[13] *Rollo*, G.R. No. 150768, p. 249.

[14] Supra note 7.

and (c) Writ of Execution dated 10 August 2000 in Civil Case No. TG-1904 entitled "*Heirs of Mamerto Manguiat, [e]t [a]l., Plaintiffs, versus J.A. Development Corporation, Bureau of Telecommunication[s], Juan Dela Cruz, and Pedro Dela Cruz, Defendants*[,"] are hereby ordered SET ASIDE, for having been issued with grave abuse of discretion.

The public respondent is hereby ordered to follow strictly Sec. 3(c), Rule 9 of the 1997 Rules of Civil Procedure.

SO ORDERED.[15]

Petitioners moved for reconsideration of the decision but the motion was denied on November 16, 2001.[16] Hence, petitioners filed the instant petition for review on *certiorari* with this Court, docketed as G.R. No. 150768.

On January 22, 2003, the Ninth Division of the Court of Appeals promulgated its decision granting the petition of the Republic of the Philippines and setting aside the judgment of the trial court in Civil Case No. TG-1904 for lack of jurisdiction.[17] Petitioners filed a motion for reconsideration but the motion was denied on September 29, 2003. They then filed a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure with this Court which was docketed as G.R. No. 160176.

On May 25, 2005, this Court resolved to consolidate G.R. Nos. 150768 and 160176.

In G.R. No. 150768, petitioners contend that the Court of Appeals erred in setting aside the partial decision. They claim that the trial court was correct in rendering the partial judgment as the causes of action against the respondent, BUTEL, Juan dela Cruz, and Pedro dela Cruz were distinct and severable, involving distinct lots or interests owned separately by each of

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[15] *Rollo*, G.R. No. 150768, p. 39.

[16] *Id.* at 47.

[17] *Rollo*, G.R. No. 160176, p. 44.

the defendants but joined in one complaint to avoid multiplicity of suits.[18]

On the other hand, respondent JDC contends that the partial decision was a pre-judgment of the entire case because its interests were inseparable from the respondent, BUTEL, Juan dela Cruz, and Pedro dela Cruz. JDC claims that its set of titles find their origin in the same title whose validity is assailed by the petitioners in their complaint. It argues that the Court of Appeals correctly relied on Section 3(c), Rule 9 of the 1997 Rules of Civil Procedure when BUTEL was declared in default,[19] *viz*.:

> SECTION 3. *Default, declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as the pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
>
> x x x x x x x x x
>
> (c) *Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

In G.R. No. 160176, petitioners assert that summons was validly served on the Republic of the Philippines considering that the sheriff's return states that it was "duly served." They further aver that Section 13, Rule 14 of the 1997 Rules of Civil Procedure does not limit service of summons to the Solicitor General but allows service on other officers as the court may direct. They point out that the failure to inform the Solicitor

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[18] *Rollo*, G.R. No. 150768, pp. 9-19.

[19] *Id.* at 93-137.

General of Civil Case No. TG-1904 can only be attributed to the gross negligence of the BUTEL.[20]

For its part, respondent Republic of the Philippines contends that summons must be served upon it through the Solicitor General and that service of summons on an employee of the BUTEL is insufficient compliance with Section 13, Rule 14 of the Rules of Court.[21]

In both cases before us, the decisive issue is whether jurisdiction over the BUTEL was validly acquired by the Regional Trial Court through service of summons upon its employee whose authority to do so does not appear from the sheriff's return.

We rule in favor of respondent, BUTEL, Juan dela Cruz, and Pedro dela Cruz.

Summons must be served upon a party for valid judgment to be rendered against him. This not only comports with basic procedural law but the constitutional postulate of due process. The disputable presumption that an official duty has been regularly performed will not apply where it is patent from the sheriff's or server's return that it is defective.[22]

Rule 14, Section 13 of the 1997 Rules of Procedure provides:

SECTION 13. *Service upon public corporations.* — When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct.[23]

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[20] *Rollo*, G.R. No. 160176, pp. 3-30.

[21] *Id.* at 99-111.

[22] *Laus v. Court of Appeals*, G.R. No. 101256, March 8, 1993, 219 SCRA 688, 705; citing *Venturanza v. Court of Appeals*, No. 77760, December 11, 1987, 156 SCRA 305, 313 (1987).

[23] 1997 Rules of Civil Procedure, Rule 14, Section 13.

It is clear under the Rules that where the defendant is the Republic of the Philippines, service of summons must be made on the Solicitor General. The BUTEL is an agency attached to the Department of Transportation and Communications created under E.O. No. 546 on July 23, 1979, and is in charge of providing telecommunication facilities, including telephone systems to government offices. It also provides its services to augment limited or inadequate existing similar private communication facilities. It extends its services to areas where no communication facilities exist yet; and assists the private sector engaged in telecommunication services by providing and maintaining backbone telecommunication network.[24] It is indisputably part of the Republic, and summons should have been served on the Solicitor General.

We now turn to the question of whether summons was properly served according to the Rules of Court. Petitioners rely solely on the sheriff's return to prove that summons was properly served. We quote its contents, *viz.*:

> THIS IS TO CERTIFY that on the 19th day of May 1999, the undersigned caused the service of Summons and Complaint upon defendant J.A. Development Corporation at the address indicated in the summons, the same having been received by a certain Jacqueline delos Santos, a person employed thereat, of sufficient age and discretion to receive such process, who signed on the lower portion of the Summons to acknowledge receipt thereof.
>
> **Likewise, copy of the Summons and Complaint was served upon defendant Bureau of Telecommunications at the address indicated in the Summons, a copy of the same was received by a certain Cholito Anitola, a person employed thereat, who signed on the lower portion of the Summons to acknowledge receipt thereof.**[25] **(Emphasis supplied)**

It is incumbent upon the party alleging that summons was validly served to prove that all requirements were met in the

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[24] Sec. 13, E.O. No. 546.

[25] *Rollo*, G.R. No. 160176, p. 61.

service thereof. We find that this burden was not discharged by the petitioners. The records show that the sheriff served summons on an **ordinary employee** and not on the Solicitor General. Consequently, the trial court acquired no jurisdiction over BUTEL, and all proceedings therein are null and void.

Further, we likewise affirm the decision of the Court of Appeals in CA-G.R. SP No. 60770, setting aside the partial decision of the trial court for having been issued with grave abuse of discretion. It ruled that when the trial court declared the BUTEL in default, allowed petitioners to present their evidence *ex parte* and rendered a partial decision holding that petitioners are the owners of the subject property, such was tantamount to prejudging the case against respondent JDC. The trial court ruled that petitioners validly acquired the subject parcel of land without any consideration of the evidence that respondent JDC may present to substantiate its claim of ownership over its aliquot part of the subject property. The trial court should have followed the Rules of Court in this situation. Sec. 3(c) of Rule 9 states that "when a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented." Therefore, the answer filed by a defendant inure to the benefit of all the defendants, defaulted or not, and all of them share a common fate in the action. It is not within the authority of the trial court to divide the case before it by first hearing it *ex parte* as against the defaulted defendant and rendering a default judgment (in the instant case, partial decision) against it, then proceeding to hear the case, as to the non-defaulted defendant. This deprives the defaulted defendant of due process as it is denied the benefit of the answer and the evidence which could have been presented by its non-defaulted co-defendant.[26]

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[26] Regalado, *Remedial Law Compendium*, Vol. 1, 7th revised ed., 1999, p. 177.

IN VIEW WHEREOF, the petitions are *DENIED* for lack of merit. The Decision and Resolution of the Fifteenth Division of the Court of Appeals in CA-G.R. SP No. 60770, dated August 29, 2001 and November 16, 2001, respectively, are *AFFIRMED.* Likewise, the Decision and Resolution of the Ninth Division of the Court of Appeals in CA-G.R. SP No. 61703, dated January 22, 2003 and September 29, 2003, respectively, are *AFFIRMED.* The partial decision of the Regional Trial Court dated February 18, 2000, its order dated July 17, 2000, and the writ of execution dated August 8, 2000 are *ANNULLED* and *SET ASIDE.*

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 150844. August 20, 2008]

CEFERINO T. ADVIENTO, *petitioner, vs.* **Heirs of Miguel Alvarez, namely: MARIA P. ALVAREZ, DR. BEDA P. ALVAREZ, JR., MIGUEL ALVAREZ, JR., DR. AGUSTINA A. BALUYOT, SEVERINO P. ALVAREZ, ANICIA LEE, AZUCENA S. HUSHEY, and ALEXANDER P. ALVAREZ; Heirs of Lilia A. Ramos, namely: DANILO RAMOS, NOEL RAMOS, ROY RAMOS, and LEO MIGUEL RAMOS; and LYDIA GAYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS.— Petitioner contends that title should

not vest to a riparian owner when there is a road bordering the land and the adjunct waters. This is an issue raised for the first time in this Court. We cannot entertain the issue for it is unprocedural and would call for determination of facts after presentation of evidence. Settled is the rule that this Court is not a trier of facts.

2. CIVIL LAW; LAND REGISTRATION; LAND REGISTRATION ACT; APPLICATION FOR REGISTRATION OF AN IMPERFECT OR INCOMPLETE TITLE; REQUISITES.— The applicable law at that time is Section 21 of Act No. 496, Land Registration Act, which requires that applications for registration should contain a notification to "**all the occupants of the land and of all adjoining owners**, if known; and, if not known, it shall state what search has been made to find them." So we held in ***Republic v. Heirs of Luisa Villa Abrille****:* For an applicant to have this imperfect or incomplete title or claim to a land to be originally registered under Act 496, the several requisites should all be satisfied; (1) Survey of land by the Bureau of Lands or a duly licensed private surveyor; (2) Filing an application for registration by the applicant; (3) Setting of the date for the initial hearing of the application by the Court; (4) Transmittal of the application and the date of the initial hearing together with all the documents or other evidences attached thereto by the Clerk of Court to the Land Registration Commission; (5) Publication of a notice of the filing of the application and the date and place of the hearing in the Official Gazette; (6) **Service of notice upon contiguous owners, occupants and those known to have interests in the property by the sheriff;** (7) Filing of answer to the application by any person whether named in the notice or not; (8) Hearing of the case by the Court; (9) Promulgation of judgment by the Court; (10) Issuance of the decree by the Court declaring the decision final and instructing the Land Registration Commission to issue a decree of confirmation and registration; (11) Entry of the decree of registration in the Land Registration Commission; (12) Sending of copy of the decree of registration to the corresponding Register of Deeds; and (13) Transcription of the decree of registration in the registration book and the issuance of the owner's duplicate original certificate of title to the applicant by the Register of Deeds, upon payment of the prescribed fees. In the case at bar, petitioner admitted the lack of the notice to

respondents. Lack of notice is a denial of due process to respondents. It is elementary that no person can be denied his property without due process of law.

3. ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS ARE NOT BOUND BY THE LAND REGISTRATION DECREE ESPECIALLY WHEN IT IS ASSAILED ON THE GROUND OF FRAUD.— We also reject petitioner's argument that the registration decree binds the RTC and the CA. The argument goes against the very grain of judicial review. The RTC and the CA are not bound by the land registration decree especially when it is assailed on the ground of fraud.

4. ID.; ID.; ID.; ID.; ID.; EXTRINSIC FRAUD, EXPLAINED.— In the case at bar, respondents pleaded their interest in the land and the fraud used which defeated such interest. No notice was given to the respondents. The lack of notice was obviously intended by the petitioner's predecessor-in-interest to prevent contest on the application. Petitioner's predecessor-in-interest falsely attested to the absence of any adverse claim, including the absence of any possession of the land. By our rulings, this constitutes extrinsic fraud. In *Libundan v. Gil,* we held that: **The purpose of the law in giving aggrieved parties, deprived of land or any interest therein, through fraud in the registration proceedings, the opportunity to review the decree is to insure fair and honest dealing in the registration of land.** But the action to annul a judgment, upon the ground of fraud, would be unavailing unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered, **Extrinsic or collateral fraud,** as distinguished from intrinsic fraud, **connotes any fraudulent scheme executed by a prevailing litigant 'outside the trial of a case** against the defeated party, or his agents, attorneys or witnesses, **whereby said defeated party is prevented from presenting fully and fairly his side of the case.**' But intrinsic fraud takes the form of 'acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case.' **Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested**

when in fact they are, or in applying for and obtaining adjudication and registration in the name of a co-owner of land which he knows had not been allotted to him in the partition, or in intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream, or in willfully misrepresenting that there are no other claims, or in deliberately failing to notify the party entitled to notice, or in inducing him not to oppose an application, or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his opposition. In all these examples the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court. The averments in the petition for review of the decree of registration constitute specific and not mere general allegations of actual and extrinsic fraud. Competent proof to support these allegations was adduced as found by the courts *a quo*. We find no compelling reason to disturb their findings.

5. ID.; ID.; A PURCHASER OF REAL ESTATE WITH KNOWLEDGE OF ANY DEFECT OR LACK OF TITLE OF THE VENDOR CANNOT CLAIM THAT HE HAS ACQUIRED TITLE THERETO IN GOOD FAITH AS AGAINST THE TRUE OWNER OF THE LAND OR INTEREST THEREIN.— It should be emphasized that petitioner is a successor-in-interest — he merely bought the land from Lydia Gaya, and hence, the petitioner stepped into the shoes of the same predecessor-in-interest. xxx. Thus, when the trial court decided against Lydia Gaya's interest, it followed that all the succeeding titles which trace interest to her title were affected. In the case at bar, the trial court found that the issuance of title was illegal. Petitioner's claimed right cannot now have more coverage and extent than that from which it originated. Indeed, petitioner's purchase of the said land despite the notice of *lis pendens* and actual knowledge of the pending case would not qualify him as an innocent purchaser for value. It is a settled rule that a purchaser of real estate with knowledge of any defect or lack of title of the vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or interest therein. The same rule applies to one with knowledge of facts which should have put

him on inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.

APPEARANCES OF COUNSEL

Nestor C. Barbosa for petitioner.
Edilberto B. Cosca for L. Gaya.
L.M. Maggay & Associates Law Offices for respondents.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review on certiorari assailing the Decision of the Court of Appeals (CA) in C.A.-G.R. CV No. 37641[1] which affirmed *in toto* the Decision of the Regional Trial Court (RTC),[2] of the Sixth Judicial Region, Branch 20, Naga City in Civil Case No. R-12 (7205) entitled "*Miguel Alvarez, plaintiff, versus Lydia Gaya, defendant.*"

Civil Case No. R-12 (7205) was a case of reconveyance involving a piece of land with an area of 228 square meters, located in Naga City. It arose when Miguel Alvarez, the original plaintiff and now substituted by his heirs as respondents herein, filed a complaint[3] on October 22, 1971 against Lydia Gaya, petitioner's predecessor-in-interest, alleging that: (1) he had been in continuous, exclusive, and notorious possession, and occupation of a parcel of land (Lot No. 3153-Cad-7150) including its buildings; (2) the lot was originally surveyed and numbered as part of Lot No. 1696 of the Cadastral Survey of Naga, Cadastral Case No. N-3, L.R.C. Cadastral Record No. N-78;

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[1] *Miguel Alvarez, plaintiff, v. Lydia Gaya, defendant-appellant,* and *Ceferino Adviento, intervenor-appellant,* C.A.-G.R. CV No. 37641, promulgated on May 10, 2001, penned by Justice Remedios A. Salazar-Fernando with Justices Romeo A. Brawner and Rebecca de Guia-Salvador concurring.

[2] Civil Case No. R-12 (7205), dated February 27, 1992.

[3] Records, Complaint, pp. 6-8.

(3) that Gaya initiated the subdivision of the said lot (now Lot No. 3164) without the knowledge of Miguel Alvarez; (4) that Gaya willfully failed to notify Miguel Alvarez of the cadastral proceedings, as the lawful occupant and owner; (5) that Gaya committed fraud in obtaining Original Certificate of Title (OCT) No. 338 of the Register of Deeds of Naga City; and (6) that because of such fraud, Alvarez sustained losses, actual and moral damages including attorney's fees.[4]

Lydia Gaya alleged in her Answer: (1) that Miguel Alvarez had no right of ownership since he had not been in continuous, exclusive and notorious possession of the said land; (2) she had been in peaceful and continuous possession as an owner from 1936 up to the present; (3) that she acquired an imperfect title thereto, which was confirmed on June 29, 1966 by the Cadastral Court in Camarines Sur in accordance with Commonwealth Act No. 141; (4) that the case was considered uncontested since she was the only claimant; (5) that the Court of First Instance ordered the registration of said property along with the improvements thereon in her and her husband's name resulting in the issuance of Decree No. 117760 on December 4, 1967 and OCT No. 338 on March 15, 1968; (6) that her title over the property has become indefeasible and can no longer be reviewed; (7) that the complaint was barred by the statute of limitations; and (8) the complainant's action was pure harassment, hence, damages should be awarded to her.[5]

On March 28, 1973, the parties agreed before the trial court on two points: (1) that the land in question is a part of a parcel of land covered by OCT No. 338 in the name of Lydia Gaya, with an area of 228 square meters, and (2) the existence of a title in Lydia Gaya's name.

Miguel Alvarez died during the trial. After the Notice of Death was submitted, he was substituted by his heirs.[6]

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[4] *Id.*

[5] Records, Answer, pp. 9-12.

[6] The following heirs were substituted: the spouse, Maria P. Alvarez;

On May 25, 1984, petitioner Ceferino Adviento filed an *Answer in Intervention With Urgent Prayer for Issuance of Preliminary Injunction* alleging that he acquired the controversial lot, or part thereof, by purchase against the interest of Miguel Alvarez. Ceferino Adviento traced his title to Fidel Cu who bought the same property from Lydia Gaya.

Petitioner Adviento adopted the allegations of Lydia Gaya insofar as they contested the ownership over the controverted land. He further alleged that Miguel Alvarez constructed a concrete building, which the former discovered was encroaching on his property. Petitioner alleged that the encroachment was illegal and unlawful because he was dispossessed of his right of entering and occupying the building. Adviento claimed damages amounting to Php 50,000.00 representing reimbursement for expenses incurred.

The RTC ruled in favor of respondents-heirs of Miguel Alvarez. The *fallo* of the RTC decision reads:

IN VIEW OF THE FOREGOING, decision is hereby rendered:

(a) ordering the annulment of Original Certificate of Title No. 338 in the name of Lydia Gaya and its subsequent titles, TCT 13200 in the name of Fidel Cu and TCT 15201 in the name of Ceferino Adviento, in so far as it covers the land adjacent to plaintiff's land covered by TCT 69 on the Southeast along the Naga River consisting of more or less 228 square meters, and further declaring plaintiff's ownership thereon [and] who [is] entitled to possession thereof;

(b) ordering defendant Lydia Gaya to indemnify plaintiffs (sic) the amount of ₱5,000 as attorney's fees and the cost of the suit.

SO ORDERED.[7]

On appeal, the CA affirmed.

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eight (8) children, namely, Beda P. Alvarez, Miguel P. Alvarez, Jr., Agustina A. Baluyot, Severino P. Alvarez, Lilia A. Ramos, Anicia Lee, Azucena A. Hussey, and Alexander P. Alvarez. Five of the children authorized their mother, Maria P. Alvarez, to litigate on their behalf. The Motion for Substitution was granted in an Order dated February 4, 1981.

[7] *Rollo*, p. 126; RTC Decision, p. 12.

The petitioner raised the following issues against the decision of the appellate court:

I.

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT WHENEVER THERE IS A ROAD BOARDERING [sic] A STREAM OR RIVER THERE IS CEASED [sic] A RIPARIAN OWNERSHIP ON AN ALLEGED ACCRETION AND WHATEVER ACCRETION THERE MIGHT HAVE BEEN DOES NOT BELONG TO THE OWNER.

II.

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT THE JUDICIAL ADMISSION OF RESPONDENT MIGUEL ALVAREZ DURING THE PRE-TRIAL AS TO THE FACT THAT PETITIONER HAD A TITLE OVER THE LAND IN QUESTION CONTROLS THE SUBSEQUENT PROCEEDING OF THE CASE.

III.

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT INASMUCH AS THERE WAS REGULARITY, VALIDITY AND CONCLUSIVENESS OF THE DECISION IN THE LAND REGISTRATION CASE (LRC) RESULTING IN A DECREE OF REGISTRATION IN FAVOR OF APPELLANT GAYA, THE SAID LRC DECISION PUTS TO REST WHATEVER ISSUES THERE MAY BE.

IV.

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT BY THE COMPLETENESS AND DETERMINATION OF TITLE IN FAVOR OF LYDIA GAYA AND SUBSEQUENTLY TO PETITIONER, THE CIVIL CASE SHOULD HAVE BEEN DISMISSED AND THAT THE DECISION OF THE REGIONAL TRIAL COURT AS WELL AS THE COURT OF APPEALS IN FAVOR OF RESPONDENT HEIRS OF MIGUEL ALVAREZ SHOULD HAVE BEEN LIKEWISE DISMISSED.

V.

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT THERE WAS NO FRAUD; PLAINTIFF AND HIS SUBSTITUTE HEIRS ARE NOT ENTITLED TO AN AWARD FOR ATTORNEY'S FEES.[8]

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[8] *Rollo,* pp. 46-58.

We find the petition without merit.

Petitioner contends that title should not vest to a riparian owner when there is a road bordering the land and the adjunct waters. This is an issue raised for the first time in this Court. We cannot entertain the issue for it is unprocedural and would call for determination of facts after presentation of evidence. Settled is the rule that this Court is not a trier of facts.[9]

The records show that the claim of Alvarez is based on possession. **The trial court and the Court of Appeals** found the claim sustained by the evidence. They held that Miguel Alvarez acquired the lot by purchase from ALATCO, on January 23, 1952, located on Padian St., Naga City, covered by OCT No. 862 which was later cancelled by TCT No. 69 in the name of Alvarez. The land was bound on the northeast by a government property; on the southeast by the Naga River; on the southwest by an unnamed street; and on the northwest by Padian Street. The trial court found that together with the area sold to Miguel Alvarez covered by OCT No. 862, the land in question was previously possessed "since time immemorial" by ALATCO having previously declared it under its name by Tax Declaration No. 9726 and in subsequent tax declarations. Alvarez further proved his possession when he applied for a building permit to construct a building along the bank of the Naga River. We find no reason to disturb these findings.

We also reject petitioner's contention that considering the admission by the respondents in the trial court as to the existence of "title" in her name, she does not need to prove her ownership of the subject lot. We affirm the ruling of the appellate court that a "[d]istinction should be drawn between taking judicial notice of sources, documents and materials without formal proof of the genuineness or authenticity, and taking notice of facts related to such admissions and materials."[10] As the appellate

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[9] *De Guzman v. Court of Appeals,* G.R. No. L-47378, February 27, 1987, 148 SCRA 75.

[10] *Rollo,* p. 25; CA Decision, p. 14.

court explained: "[w]here the court finds that it is while the source is genuine, the facts therein are not clearly indisputable and should, therefore be subject to proof."[11] The totality of proof adduced by the parties shows that the title of petitioner's predecessor-in-interest is bereft of any legal basis.

We cannot also agree with petitioner that the decision of the appellate court failed to recognize the regularity, validity and conclusiveness of the order in the Land Registration Case which culminated in the decree of registration in favor of petitioner's predecessor-in-interest. Further, petitioner argues that it was enough that there was publication of notice in the application for registration.[12] Petitioner contends that respondents had all the opportunity to know of the application for registration made by petitioner's predecessor-in-interest over the subject lot.

The applicable law at that time is Section 21 of Act No. 496, Land Registration Act,[13] which requires that applications for registration should contain a notification to **"all the occupants of the land and of all adjoining owners**, if known; and, if not known, it shall state what search has been made to find them."[14] So we held in ***Republic v. Heirs of Luisa Villa Abrille*:**[15]

> For an applicant to have this imperfect or incomplete title or claim to a land to be originally registered under Act 496, the several requisites should all be satisfied; (1) Survey of land by the Bureau of Lands or a duly licensed private surveyor; (2) Filing an application for registration by the applicant; (3) Setting of the date for the initial

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[11] *Rollo*, p. 77; CA Decision, p.14.

[12] *Id.*

[13] Land Registration Act, Act No. 496, promulgated on November 6, 1902, superseded by the Property Registration Decree, Presidential Decree No. 1529, June 11, 1978.

[14] Emphasis supplied.

[15] L-39248, May 7, 1976, 71 SCRA 57.

hearing of the application by the Court; (4) Transmittal of the application and the date of the initial hearing together with all the documents or other evidences attached thereto by the Clerk of Court to the Land Registration Commission; (5) Publication of a notice of the filing of the application and the date and place of the hearing in the Official Gazette; (6) **Service of notice upon contiguous owners, occupants and those known to have interests in the property by the sheriff;** (7) Filing of answer to the application by any person whether named in the notice or not; (8) Hearing of the case by the Court; (9) Promulgation of judgment by the Court; (10) Issuance of the decree by the Court declaring the decision final and instructing the Land Registration Commission to issue a decree of confirmation and registration; (11) Entry of the decree of registration in the Land Registration Commission; (12) Sending of copy of the decree of registration to the corresponding Register of Deeds; and (13) Transcription of the decree of registration in the registration book and the issuance of the owner's duplicate original certificate of title to the applicant by the Register of Deeds, upon payment of the prescribed fees.[16]

In the case at bar, petitioner admitted the lack of the notice to respondents. Lack of notice is a denial of due process to respondents. It is elementary that no person can be denied his property without due process of law.[17]

We also reject petitioner's argument that the registration decree binds the RTC and the CA. The argument goes against the very grain of judicial review. The RTC and the CA are not bound by the land registration decree especially when it is assailed on the ground of fraud.

Section 38 of Act No. 496, The Land Registration Act, 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 for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet

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[16] Emphasis supplied.

[17] 1987 PHIL. CONST., Art. III, §1.

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 all 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 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 encumbrancer for value.[18]

In ***Salomon v. Bocauto***,[19] Justice Laurel had the occasion to discuss the nature of this provision:

Under Section 38 of Act No. 496, the petitioner must show affirmatively that (1) he has an interest or estate in the land, and (2) he has been deprived of that interest through fraud in the procurement of the decree of registration. The essential facts are to be clearly alleged in the petition; otherwise, the registration court is justified in dismissing the same. (*Guzman vs. Ortiz*, 12 Phil., 701; Cusar Insular Government, 13 Phil., 319; *Apurado vs. Apurado*, 26 Phil., 586; and *Escudero & Marasigan vs. Esguerra*, 48 Phil., 511.) In the present

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[18] §38, The Land Registration Act, Act No. 496, November 6, 1902 (emphasis supplied).

[19] 71 Phil. 363, 364-365 (emphasis supplied).

case, the appellants Bocauto and Redon pretend to derive their claim from llariano Redon, the original owner. The lower court, however, in its decision dated January 26, 1939, appears to have rejected this claim and found that Mariano Redon had sold the said land to Bonifacio Redon, who, in turn, conveyed it to Policarpio Tamoro. Moreover, **both petitioners had notice of the original registration proceedings, but failed to put up any claim and to show title in themselves.**

In the case at bar, respondents pleaded their interest in the land and the fraud used which defeated such interest. No notice was given to the respondents. The lack of notice was obviously intended by the petitioner's predecessor-in-interest to prevent contest on the application. Petitioner's predecessor-in-interest falsely attested to the absence of any adverse claim, including the absence of any possession of the land. By our rulings, this constitutes extrinsic fraud. In ***Libundan v. Gil***,[20] we held that:

The purpose of the law in giving aggrieved parties, deprived of land or any interest therein, through fraud in the registration proceedings, the opportunity to review the decree is to insure fair and honest dealing in the registration of land. But the action to annul a judgment, upon the ground of fraud, would be unavailing unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered, **Extrinsic or collateral fraud**, as distinguished from intrinsic fraud, **connotes any fraudulent scheme executed by a prevailing litigant 'outside the trial of a case** against the defeated party, or his agents, attorneys or witnesses, **whereby said defeated party is prevented from presenting fully and fairly his side of the case.'** But intrinsic fraud takes the form of 'acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case.'

Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are, or in applying for and

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[20] G.R. No. L-21163, May 17, 1972, 45 SCRA 17.

obtaining adjudication and registration in the name of a co-owner of land which he knows had not been allotted to him in the partition, or in intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream, or in willfully misrepresenting that there are no other claims, or in deliberately failing to notify the party entitled to notice, or in inducing him not to oppose an application, or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his opposition. In all these examples the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.[21]

The averments in the petition for review of the decree of registration constitute specific and not mere general allegations of actual and extrinsic fraud.[22] Competent proof to support these allegations was adduced as found by the courts *a quo*. We find no compelling reason to disturb their findings.

It should be emphasized that petitioner is a successor-in-interest—he merely bought the land from Lydia Gaya, and hence, the petitioner stepped into the shoes of the same predecessor-in-interest.

As the RTC found:

On cross, Ce[f]erino Adviento admitted the existence of an annotation on the title of the pendency of Civil Case No. 7205 filed as early as October 1971 before he purchased the land in question, and therefore knew the risk of buying it. He was likewise shown a title by Fidel Cu and also knew of the existence of a *lis pendens* in the latter's title. He also examined the records of this case, was aware that the plaintiff was a boundary owner of the land in question, but did not verify his title as to whether his land was bounded on the Southeast by Naga River. Before he filed his answer-in-intervention in May 1984, he already knew of the records of this case and only coordinated with his counsel. He came to know that the property of Alvarez is

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[21] *Id.,* pp. 27-29 (emphasis supplied).

[22] *Rollo*, pp. 89-90; Complaint, pp. 2-3.

bounded by the Naga River on the Southeast after the relocation made by the Commissioner. Despite such knowledge, he did not confront Lydia Gaya or Fidel Cu about it. In 1984 he did not know that the heirs of Miguel Alvarez were in possession of the construction work of Alvarez which was going on at that time on the premises, but he did not confront Alvarez about it. At the time of his purchase of the land, there were no buildings on the land but only small shanties at the corner of Elias Angeles Street and a "Cafehan" at the road along the river with nipa roofing and the walls were somewhat nipa too, and which appeared to be quite old. He did not however inquire who allowed the construction thereof. At the time of his purchase in 1984, the area owned by Alvarez which appears now to adjoin the property he purchased was used as a bus terminal which was put on much later, but not at the time of his purchase.

Admittedly, the land in question consisting of 228 square meters, more or less, is a portion of Lot 3164 covered by OCT 338 in the name of Lydia Gaya.[23]

Thus, when the trial court decided against Lydia Gaya's interest, it followed that all the succeeding titles which trace interest to her title were affected. In the case at bar, the trial court found that the issuance of title was illegal. Petitioner's claimed right cannot now have more coverage and extent than that from which it originated. Indeed, petitioner's purchase of the said land despite the notice of *lis pendens* and actual knowledge of the pending case would not qualify him as an innocent purchaser for value.[24] It is a settled rule that a purchaser of real estate with knowledge of any defect or lack of title of the vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or interest therein. The same rule applies to one with knowledge of facts which should have put him on inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[25]

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[23] *Rollo,* pp.122-123; RTC Decision, pp. 8-9.

[24] *Rollo,* pp. 143-144.

[25] *J.M. Tuason v. Court of Appeals*, No. L-41233, 21 November 1979, 94 SCRA 413.

IN VIEW WHEREOF, premises considered, the petition for review on *certiorari* is *DENIED* for lack of merit. The assailed Decision, dated May 10, 2001 of the Court of Appeals in C.A.-G.R. CV No. 37641 affirming the Decision of the Regional Trial Court of the Sixth Judicial Region, Branch 20, Naga City in Civil Case No. R-12 (7205) dated February 27, 1992 ordering the annulment of OCT No. 338, is *AFFIRMED.*

Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

THIRD DIVISION

[G.R. No. 151085. August 20, 2008]

JOEMAR ORTEGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ACCUSED CAN BE CONVICTED SOLELY ON THE BASIS OF THE RAPE VICTIM'S TESTIMONY WHERE THE SAME MEETS THE TEST OF CREDIBILITY.— In sum, we are convinced that petitioner committed the crime of rape against AAA. In a prosecution for rape, the complainant's candor is the single most important factor. If the complainant's testimony meets the test of credibility, the accused can be convicted solely on that basis. The RTC, as affirmed by the CA, did not doubt AAA's credibility, and found no ill motive for her to charge petitioner of the heinous crime of rape and to positively identify

him as the malefactor. Both courts also accorded respect to BBB's testimony that he saw petitioner having sexual intercourse with his younger sister.

2. ID.; ID.; ID.; NO MOTHER OR FATHER WOULD STOOP SO LOW AS TO SUBJECT THEIR DAUGHTER TO THE TRIBULATIONS AND EMBARRASSMENT OF A PUBLIC TRIAL IF THE CHARGE OF RAPE IS NOT TRUE.— While petitioner asserts that AAA's poverty is enough motive for the imputation of the crime, we discard such assertion for no mother or father like MMM and FFF would stoop so low as to subject their daughter to the tribulations and the embarrassment of a public trial knowing that such a traumatic experience would damage their daughter's psyche and mar her life if the charge is not true. We find petitioner's claim that MMM inflicted the abrasions found by Dr. Jocson in the genitalia of AAA, in order to extort money from petitioner's parents, highly incredible.

3. CRIMINAL LAW; RAPE; SLIGHTEST TOUCHING OF THE LIPS OF THE FEMALE ORGAN OR THE LABIA OF THE PUDENDUM CONSTITUTES RAPE.— Lastly, it must be noted that in most cases of rape committed against young girls like AAA who was only 6 years old then, total penetration of the victim's organ is improbable due to the small vaginal opening. Thus, it has been held that actual penetration of the victim's organ or rupture of the hymen is not required. Therefore, it is not necessary for conviction that the petitioner succeeded in having full penetration, because the slightest touching of the lips of the female organ or of the labia of the pudendum constitutes rape.

4. ID.; EXEMPTING CIRCUMSTANCES; ABSENCE OF INTELLIGENCE; NO CRIMINAL LIABILITY ARISES WHERE THERE IS COMPLETE ABSENCE OF ANY CONDITIONS WHICH CONSTITUTE FREE WILL OR VOLUNTARINESS OF THE ACT.— However, for one who acts by virtue of any of the exempting circumstances, although he commits a crime, by the complete absence of any of the conditions which constitute free will or voluntariness of the act, no criminal liability arises. Therefore, while there is a crime committed, no criminal liability attaches. Thus, in *Guevarra v. Almodovar*, we held: [I]t is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; **the complete absence of intelligence, freedom of action, or intent, or on the**

absence of negligence on the part of the accused. In expounding on intelligence as the second element of *dolus*, Albert has stated: "The second element of dolus is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability." It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act.

5. ID.; ID.; REPUBLIC ACT NO. 9344; ACCORDED RETROACTIVE APPLICATION; EXEMPTION FROM CRIMINAL LIABILITY OF CHILDREN IN CONFLICT WITH THE LAW; AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE IS CONTROLLING NOT THEIR AGE AT THE TIME OF THE PROMULGATION OF JUDGMENT.— Likewise, Section 64 of the law categorically provides that cases of children 15 years old and below, at the time of the commission of the crime, shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer (LSWDO). What is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense. In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. Given this precise statutory declaration, it is imperative that this Court accord retroactive application to the aforequoted provisions of R.A. No. 9344 pursuant to the well-entrenched principle in criminal law — *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to the accused are given retroactive effect. This principle is embodied in Article 22 of the Revised Penal Code. xxx We also have extant jurisprudence that the principle has been given expanded application in certain instances involving special laws. R.A. No. 9344 should be no exception.

6. ID.; ID.; ID.; ID.; PENAL LAWS ARE CONSTRUED LIBERALLY IN FAVOR OF THE ACCUSED; AN ACCUSED WHO WAS BELOW 15 YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE CRIME, BUT ALREADY BEYOND 18 YEARS OF AGE AT THE TIME OF THE PROMULGATION OF THE JUDGMENT, IS EXEMPT FROM CRIMINAL LIABILITY.— Moreover, penal laws are construed liberally in

favor of the accused. In this case, the plain meaning of R.A. No. 9344's unambiguous language, coupled with clear lawmakers' intent, is most favorable to herein petitioner. No other interpretation is justified, for the simple language of the new law itself demonstrates the legislative intent to favor the CICL. It bears stressing that the petitioner was only 13 years old at the time of the commission of the alleged rape. This was duly proven by the certificate of live birth, by petitioner's own testimony, and by the testimony of his mother. Furthermore, petitioner's age was never assailed in any of the proceedings before the RTC and the CA. Indubitably, petitioner, at the time of the commission of the crime, was below 15 years of age. Under R.A. No. 9344, he is exempted from criminal liability.

7. ID.; ID.; ID.; ID.; ID.; ID.; EXEMPTION FROM CRIMINAL LIABILITY DOES NOT INCLUDE EXEMPTION FROM CIVIL LIABILITY; CIVIL LIABILITY OF PETITIONER-ACCUSED FOR THE CRIME OF RAPE.— However, while the law exempts petitioner from criminal liability for the two (2) counts of rape committed against AAA, Section 6 thereof expressly provides that there is no concomitant exemption from civil liability. Accordingly, this Court sustains the ruling of the RTC, duly affirmed by the CA, that petitioner and/or his parents are liable to pay AAA ₱100,000.00 as civil indemnity. This award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape. The RTC, however, erred in not separately awarding moral damages, distinct from the civil indemnity awarded to the rape victim. AAA is entitled to moral damages in the amount of ₱50,000.00 for each count of rape, pursuant to Article 2219 of the Civil Code, without the necessity of additional pleading or proof other than the fact of rape. Moral damages are granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.

8. STATUTORY CONSTRUCTION; STATUTES; THE INTENT OF A STATUTE IS THE SOUL OF THE LAW.— The Court is bound to enforce this legislative intent, which is the dominant factor in interpreting a statute. Significantly, this Court has declared in a number of cases, that intent is the soul of the law, *viz.*: The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give

effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.

APPEARANCES OF COUNSEL

Valencia Ciocon Dabao Valencia De La Paz Dionela Ravina and Pandan Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated October 26, 2000 which affirmed *in toto* the Decision[3] of the Regional Trial Court (RTC) of Bacolod City, Branch 50, dated May 13, 1999, convicting petitioner Joemar Ortega[4] (petitioner) of the crime of Rape.

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[1] *Rollo*, pp. 12-32.

[2] Penned by Associate Justice Ruben T. Reyes (now a member of this Court), with Associate Justices Mariano M. Umali and Rebecca De Guia-Salvador concurring; *id.* at 35-52.

[3] Penned by Judge Roberto S. Chiongson; *id.* at 54-75.

[4] Also referred to as Jomar Ortega, Joemar Ortiga and Joemart Ortiga in other pleadings and documents.

The Facts

Petitioner, then about 14 years old,[5] was charged with the crime of Rape in two separate informations both dated April 20, 1998, for allegedly raping AAA,[6] then about eight (8) years of age. The accusatory portions thereof respectively state:

Criminal Case No. 98-19083

That sometime in August, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

CONTRARY TO LAW.[7]

Criminal Case No. 98-19084

That on or about the 1st day of December, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

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[5] As the birth certificate shows that petitioner was born on August 8, 1983 (records, p. 157), he was only thirteen (13) years old in August and December 1, 1996. He was already fourteen (14) years old at the time of the filing of the two Informations charging him of rape.

[6] Per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 also known as the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victim and those of her immediate family members other than the accused are to be withheld and fictitious initials are instead used to protect the victim's privacy. Likewise, the exact address of the victim is to be deleted (*People v. Rentoria*, G.R. No. 175333, September 21, 2007, 533 SCRA 708).

[7] CA *rollo*, pp. 21-22.

CONTRARY TO LAW.[8]

Upon arraignment on September 10, 1998, petitioner pleaded not guilty to the offense charged.[9] Thus, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

On February 27, 1990, AAA was born to spouses FFF and MMM.[10] Among her siblings CCC, BBB, DDD, EEE and GGG, AAA is the only girl in the family. Before these disturbing events, AAA's family members were close friends of petitioner's family, aside from the fact that they were good neighbors. However, BBB caught petitioner raping his younger sister AAA inside their own home. BBB then informed their mother MMM who in turn asked AAA.[11] There, AAA confessed that petitioner raped her three (3) times on three (3) different occasions.

The first occasion happened sometime in August 1996. MMM left her daughter AAA, then 6 years old and son BBB, then 10 years old, in the care of Luzviminda Ortega[12] (Luzviminda), mother of petitioner, for two (2) nights because MMM had to stay in a hospital to attend to her other son who was sick.[13] During the first night at petitioner's residence, petitioner entered the room where AAA slept together with Luzviminda and her daughter. Petitioner woke AAA up and led her to the sala. There petitioner raped AAA. The second occasion occurred the following day, again at the petitioner's residence. Observing that nobody was around, petitioner brought AAA to their comfort room and raped her there. AAA testified that petitioner inserted

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

[9] RTC Order dated September 10, 1998; records, p. 83.

[10] Certificate of Live Birth of AAA; *id.* at 167.

[11] TSN, October 26, 1998, pp. 8-33.

[12] Also referred to as Luzviminda Ortiga in other pleadings and documents.

[13] TSN, November 6, 1998, p. 13.

his penis into her vagina and she felt pain. In all of these instances, petitioner warned AAA not to tell her parents, otherwise, he would spank her.[14] AAA did not tell her parents about her ordeal.

The third and last occasion happened in the evening of December 1, 1996. Petitioner went to the house of AAA and joined her and her siblings in watching a battery-powered television. At that time, Luzviminda was conversing with MMM. While AAA's siblings were busy watching, petitioner called AAA to come to the room of CCC and BBB. AAA obeyed. While inside the said room which was lighted by a kerosene lamp, petitioner pulled AAA behind the door, removed his pants and brief, removed AAA's shorts and panty, and in a standing position inserted his penis into the vagina of AAA.[15] AAA described petitioner's penis as about five (5) inches long and the size of two (2) ballpens. She, likewise, narrated that she saw pubic hair on the base of his penis.[16]

This last incident was corroborated by BBB in his testimony. When BBB was about to drink water in their kitchen, as he was passing by his room, BBB was shocked to see petitioner and AAA both naked from their waist down in the act of sexual intercourse. BBB saw petitioner holding AAA and making a pumping motion. Immediately, BBB told petitioner to stop; the latter, in turn, hurriedly left. Thereafter, BBB reported the incident to his mother, MMM.[17]

MMM testified that when she asked AAA about what BBB saw, AAA told her that petitioner inserted his fingers and his penis into her vagina. MMM learned that this was not the only incident that petitioner molested AAA as there were two previous occasions. MMM also learned that AAA did not report her

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[14] *Id.* at 13-19.

[15] *Id.* at 33-50.

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

[17] *Supra* note 11, at 9-34.

ordeal to them out of fear that petitioner would spank her. MMM testified that when BBB reported the matter to her, petitioner and Luzviminda already left her house. After waiting for AAA's brothers to go to sleep, MMM, with a heavy heart, examined AAA's vagina and she noticed that the same was reddish and a whitish fluid was coming out from it. Spouses FFF and MMM were not able to sleep that night. The following morning, at about four o'clock, MMM called Luzviminda and petitioner to come to their house. MMM confronted Luzviminda about what petitioner did to her daughter, and consequently, she demanded that AAA should be brought to a doctor for examination.[18]

MMM, together with Luzviminda, brought AAA to Dr. Lucifree Katalbas[19] (Dr. Katalbas), the Rural Health Officer of the locality who examined AAA and found no indication that she was molested.[20] Refusing to accept such findings, on December 12, 1996, MMM went to Dr. Joy Ann Jocson (Dr. Jocson), Medical Officer IV of the Bacolod City Health Office. Dr. Jocson made an unofficial written report[21] showing that there were "*abrasions on both right and left of the labia minora and a small laceration at the posterior fourchette*." She also found that the minor injuries she saw on AAA's genitals were relatively fresh; and that such abrasions were superficial and could disappear after a period of 3 to 4 days. Dr. Jocson, however, indicated in her certification that her findings required the confirmation of the Municipal Health Officer of the locality.

Subsequently, an amicable settlement[22] was reached between the two families through the DAWN Foundation, an organization

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[18] TSN, October 28, 1998, pp. 21-64.

[19] Also referred to as Dr. Lucifre Katalbas or Dr. Katalbas in other pleadings and documents.

[20] Records, pp. 155-155-A.

[21] *Id.* at 112.

[22] *Supra* note 16, at 65. Please also see Certification dated February 5, 1998, attesting to the fact that an amicable settlement was entered into by the two families; records, p. 156.

that helps abused women and children. Part of the settlement required petitioner to depart from their house to avoid contact with AAA.[23] As such, petitioner stayed with a certain priest in the locality. However, a few months later, petitioner went home for brief visits and in order to bring his dirty clothes for laundry. At the sight of petitioner, AAA's father FFF was infuriated and confrontations occurred. At this instance, AAA's parents went to the National Bureau of Investigation (NBI) which assisted them in filing the three (3) counts of rape. However, the prosecutor's office only filed the two (2) instant cases.

Version of the Defense

Petitioner was born on August 8, 1983 to spouses Loreto (Loreto) and Luzviminda Ortega.[24] He is the second child of three siblings—an elder brother and a younger sister. Petitioner denied the accusations made against him. He testified that: his parents and AAA's parents were good friends; when MMM left AAA and her brothers to the care of his mother, petitioner slept in a separate room together with BBB and CCC while AAA slept together with Luzviminda and his younger sister; he never touched or raped AAA or showed his private parts to her; petitioner did not threaten AAA in any instance; he did not rape AAA in the former's comfort room, but he merely accompanied and helped AAA clean up as she defecated and feared the toilet bowl; in the process of washing, he may have accidentally touched AAA's anus; on December 1, 1996, petitioner together with his parents, went to AAA's house;[25] they were dancing and playing together with all the other children at the time; while they were dancing, petitioner hugged and lifted AAA up in a playful act, at the instance of which BBB ran and reported the matter to MMM, who at the time was with Luzviminda, saying that petitioner and AAA were having sexual intercourse;[26] petitioner explained to MMM that they

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[23] TSN, January 19, 1999, pp. 4-13.

[24] *Supra* note 5.

[25] TSN, March 16, 1999, pp. 3-26.

[26] Petitioner's Counter-Affidavit dated January 6, 1998; records, pp. 158-159.

were only playing, and that he could not have done to AAA what he was accused of doing, as they were together with her brothers, and he treated AAA like a younger sister;[27] BBB was lying; AAA's parents and his parents did not get angry at him nor did they quarrel with each other; petitioner and his parents peacefully left AAA's house at about nine o'clock in the evening; however, at about four o'clock in the morning, petitioner and his parents were summoned by MMM to go to the latter's house; upon arriving there they saw BBB being maltreated by his father as AAA pointed to BBB as the one who molested her; and MMM and Luzviminda agreed to bring AAA to a doctor for examination.[28]

Luzviminda corroborated the testimony of her son. She testified that: her son was a minor at the time of the incident; CCC and BBB were the children of MMM in her first marriage, while AAA and the rest of her siblings were of the second marriage; CCC and BBB are half-brothers of AAA; when MMM entrusted AAA and her brothers to her sometime in August of 1996, she slept with AAA and her youngest daughter in a separate room from petitioner; on December 1, 1996, she was at AAA's house watching television and conversing with MMM, while FFF and Loreto were having a drinking spree in the kitchen; from where they were seated, she could clearly see all the children, including petitioner and AAA, playing and dancing in the dining area; she did not hear any unusual cry or noise at the time; while they were conversing, BBB came to MMM saying that petitioner and AAA were having sexual intercourse; upon hearing such statement, Luzviminda and MMM immediately stood up and looked for them, but both mothers did not find anything unusual as all the children were playing and dancing in the dining area; Luzviminda and MMM just laughed at BBB's statement; the parents of AAA, at that time, did not examine her in order to verify BBB's statement nor did they get angry

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[27] TSN, March 25, 1999, pp. 7-8.

[28] *Supra* note 25, at 17-24.

at petitioner or at them; and they peacefully left AAA's house. However, the following day, MMM woke Luzviminda up, saying that FFF was spanking BBB with a belt as AAA was pointing to BBB nor to petitioner as the one who molested her. At this instance, Luzviminda intervened, telling FFF not to spank BBB but instead, to bring AAA to a doctor for examination. Luzviminda accompanied MMM to Dr. Katalbas who found no indication that AAA was molested. She also accompanied her to Dr. Jocson. After getting the results of the examination conducted by Dr. Jocson, they went to the police and at this instance only did Luzviminda learn that MMM accused petitioner of raping AAA. Petitioner vehemently denied to Luzviminda that he raped AAA. Thereafter, MMM and Luzviminda went to their employer who recommended that they should seek advice from the Women's Center. At the said Center, both agreed on an amicable settlement wherein petitioner would stay away from AAA. Thus, petitioner stayed with a certain priest in the locality for almost two (2) years. But almost every Saturday, petitioner would come home to visit his parents and to bring his dirty clothes for laundry. Every time petitioner came home, FFF bad-mouthed petitioner, calling him a rapist. Confrontations occurred until an altercation erupted wherein FFF allegedly slapped Luzviminda. Subsequently, AAA's parents filed the instant cases.[29]

The RTC's Ruling

On May 13, 1999, the RTC held that petitioner's defenses of denial cannot prevail over the positive identification of petitioner as the perpetrator of the crime by AAA and BBB, who testified with honesty and credibility. Moreover, the RTC opined that it could not perceive any motive for AAA's family to impute a serious crime of Rape to petitioner, considering the close relations of both families. Thus, the RTC disposed of this case in this wise:

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[29] TSN, January 26, 1999, pp. 8-87.

FOR ALL THE FOREGOING, the Court finds the accused Joemar Ortega Y Felisario GUILTY beyond reasonable doubt as Principal by Direct Participation of the crime of RAPE as charged in Criminal Cases Nos. 98-19083 and 98-19084 and there being no aggravating or mitigating circumstance, he is sentenced to suffer the penalty of Two (2) Reclusion Temporal in its medium period. Applying the Indeterminate Sentence Law, the accused shall be imprisoned for each case for a period of Six (6) years and One (1) day of Prision Mayor, as minimum, to Fifteen (15) years of Reclusion Temporal, as maximum. The accused is condemned to pay the offended party AAA, the sum of ₱100,000.00 as indemnification for the two (2) rapes (*sic*).

Aggrieved, petitioner appealed the RTC Decision to the CA.[30]

Taking into consideration the age of petitioner and upon posting of the corresponding bail bond for his provisional liberty in the amount of ₱40,000.00, the RTC ordered the petitioner's release pending appeal.[31]

The CA's Ruling

On October 26, 2000, the CA affirmed *in toto* the ruling of the RTC, holding that the petitioner's defense of denial could not prevail over the positive identification of the petitioner by the victim AAA and her brother BBB, which were categorical, consistent and without any showing of ill motive. The CA also held that the respective medical examinations conducted by the two doctors were irrelevant, as it is established that the slightest penetration of the lips of the female organ consummates rape; thus, hymenal laceration is not an element of rape. Moreover, the CA opined that petitioner acted with discernment as shown by his covert acts. Finally, the CA accorded great weight and respect to the factual findings of the RTC, particularly in the evaluation of the testimonies of witnesses.

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[30] Notice of Appeal and Urgent Motion for Release on Recognizance pending Appeal dated May 17, 1999; records, pp. 251-252.

[31] Release Order dated June 11, 1999; *id.* at 275.

Petitioner filed his Motion for Reconsideration [32] of the assailed Decision which the CA denied in its Resolution [33] dated November 7, 2001.

Hence, this Petition based on the following grounds:

I.

THE HONORABLE COURT OF APPEALS HAS OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE WHICH IF CONSIDERED MIGHT AFFECT THE RESULT OF THE CASE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FAILED TO APPRECIATE THE MEDICAL FINDINGS OF DR. LUCIFREE KATALBAS.

III.

THE FINDINGS OF THE LOWER COURT, AFFIRMED BY THE APPELLATE COURT, THAT PETITIONER-APPELLANT IN FACT COMMITTED AND IS CAPABLE OF COMMITTING THE ALLEGED RAPE WITHIN THE RESIDENCE OF THE VICTIM WHERE SEVERAL OF THE ALLEGED VICTIM'S FAMILY MEMBERS AND THEIR RESPECTIVE MOTHERS WERE PRESENT IS IMPROBABLE AND CONTRARY TO HUMAN EXPERIENCE.

IV.

THE HONORABLE APPELLATE COURT ERRED IN UPHOLDING THE FACTS SET FORTH BY THE ALLEGED VICTIM REGARDING THE CIRCUMSTANCES ATTENDING THE COMMISSION OF RAPE SOMETIME IN AUGUST 1996.[34]

Petitioner argues that, while it is true that the factual findings of the CA are conclusive on this Court, we are not prevented from overturning such findings if the CA had manifestly

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[32] *Rollo,* pp. 76-83.

[33] *Id.* at 53.

[34] *Id.* at 21-22.

overlooked certain facts of substance and value which if considered might affect the result of the case. Petitioner stresses that from the testimonies of AAA and BBB, it can be deduced that penetration was achieved; thus, AAA felt pain. Petitioner contends that assuming the allegations of AAA are true that petitioner inserted his fingers and his penis into her vagina, certainly such acts would leave certain abrasions, wounds and/or lacerations on the genitalia of AAA, taking into consideration her age at the time and the alleged size of petitioner's penis. However, such allegation is completely belied by the medical report of Dr. Katalbas who, one day after the alleged rape, conducted a medical examination on AAA and found that there were no signs or indications that AAA was raped or molested. Petitioner submits that the CA committed a grave error when it disregarded such medical report since it disproves the allegation of the existence of rape and, consequently, the prosecution failed to prove its case; thus, the presumption of innocence in favor of the petitioner subsists. Moreover, petitioner opines that like AAA, petitioner is also a child of the barrio who is innocent, unsophisticated and lacks sexual experience. As such, it is incredible and contrary to human reason that a 13- year-old boy would commit such act in the very dwelling of AAA, whose reaction to pain, at the age of six, could not be controlled or subdued. Petitioner claims that poverty was MMM's motive in filing the instant case, as she wanted to extort money from the parents of the petitioner. Petitioner points out that the medical report of Dr. Jocson indicated that the abrasions that were inflicted on the genitalia of AAA were relatively fresh and the same could disappear within a period of 3 to 4 days. Considering that Dr. Jocson conducted the medical examination on December 12, 1996, or after the lapse of eleven (11) days after the alleged incident of rape, and that AAA's parents only filed the instant case after almost a year, in order to deter Luzviminda from filing a case of slander by deed against FFF, it is not inconceivable that MMM inflicted said abrasions on AAA to prove their case and to depart from the initial confession of AAA that it was actually BBB who raped her. Finally, petitioner submits that

AAA and BBB were merely coached by MMM to fabricate these stories.[35]

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) contends that: the arguments raised by the petitioner are mere reiterations of his disquisitions before the CA; the RTC, as affirmed by the CA, did not rely on the testimonies of both doctors since despite the absence of abrasions, rape is consummated even with the slightest penetration of the lips of the female organ; what is relevant in this case is the reliable testimony of AAA that petitioner raped her in August and December of 1996; even in the absence of force, rape was committed considering AAA's age at that time; as such, AAA did not have any ill motive in accusing petitioner; and it is established that the crime of rape could be committed even in the presence of other people nearby. Moreover, the OSG relies on the doctrine that the evaluation made by a trial court is accorded the highest respect as it had the opportunity to observe directly the demeanor of a witness and to determine whether said witness was telling the truth or not. Lastly, the OSG claims that petitioner acted with discernment when he committed the said crime, as manifested in his covert acts.[36]

However, Republic Act (R.A.) No. 9344,[37] or the Juvenile Justice and Welfare Act of 2006, was enacted into law on April 28, 2006 and it took effect on May 20, 2006.[38] The law establishes a comprehensive system to manage children in conflict

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[35] *Supra* note 1. Please see also Petitioner's Reply dated February 10, 2003; *id* at. 113-119.

[36] OSG's Comment dated May 27, 2002; *id.* at 96-107.

[37] Entitled AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

[38] *Declarador v. Gubaton*, G.R. No. 159208, August 18, 2006, 499 SCRA 341, 350.

with the law[39] (CICL) and children at risk[40] with child-appropriate procedures and comprehensive programs and services such as prevention, intervention, diversion, rehabilitation, re-integration and after-care programs geared towards their development. In order to ensure its implementation, the law, particularly Section 8[41] thereof, has created the Juvenile Justice and Welfare Council

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[39] SECTION 4. *Definition of Terms.* — The following terms as used in this Act shall be defined as follows:

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(e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

x x x x x x x x x

[40] (d) "Child at Risk" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

(1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or, unable to provide protection for the child;

(2) being exploited including sexually or economically;

(3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;

(4) coming from a dysfunctional or broken family or without a parent or guardian;

(5) being out of school;

(6) being a street child;

(7) being a member of a gang;

(8) living in a community with a high level of criminality or drug abuse; and

(9) living in situations of armed conflict.

[41] SECTION 8. *Juvenile Justice and Welfare Council (JJWC).* — A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an Undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

(a) Council for the Welfare of Children (CWC);

(b) Department of Education (DepEd);

(JJWC) and vested it with certain duties and functions[42] such as the formulation of policies and strategies to prevent juvenile

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(c) Department of the Interior and Local Government (DILG);

(d) Public Attorney's Office (PAO);

(e) Bureau of Corrections (BUCOR);

(f) Parole and Probation Administration (PPA);

(g) National Bureau of Investigation (NBI);

(h) Philippine National Police (PNP);

(i) Bureau of Jail Management and Penology (BJMP);

(j) Commission on Human Rights (CHR);

(k) Technical Education and Skills Development Authority (TESDA);

(l) National Youth Commission (NYC); and

(m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

(a) Department of Justice (DOJ);

(b) Department of Social Welfare and Development (DSWD);

(c) Council for the Welfare of Children (CWC);

(d) Department of Education (DepEd);

(e) Department of the Interior and Local Government (DILG);

(f) Commission on Human Rights (CHR);

(g) National Youth Commission (NYC); and

(h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

[42] SECTION 9. *Duties and Functions of the JJWC.* — The JJWC shall have the following duties and functions:

(a) To oversee the implementation of this Act;

delinquency and to enhance the administration of juvenile justice as well as the treatment and rehabilitation of the CICL. The

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(b) To advise the President on all matters and policies relating to juvenile justice and welfare;

(c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;

(d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organization;

(e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;

(f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;

(g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as, but not limited to:

(1) the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;

(2) the periodic trends, problems and causes of juvenile delinquency and crimes; and

(3) the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

(h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

(i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

law also provides for the immediate dismissal of cases of CICL, specifically Sections 64, 65, 66, 67 and 68 of R.A. No. 9344's Transitory Provisions.[43]

The said Transitory Provisions expressly provide:

Title VIII

Transitory Provisions

SECTION 64. *Children in Conflict with the Law Fifteen (15) Years Old and Below.* — Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs, as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SECTION 65. *Children Detained Pending Trial.* — If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention. If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SECTION 66. *Inventory of "Locked-up" and Detained Children in Conflict with the Law.* — The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

(j) To submit an annual report to the President on the implementation of this Act; and

(k) To perform such other functions as may be necessary to implement the provisions of this Act.

[43] JJWC's Council Resolution No. 3, Series of 2006 entitled GUIDELINES TO IMPLEMENT THE TRANSITORY PROVISIONS OF R.A. 9344, dated July 11, 2006.

SECTION 67. *Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings.* — If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict with the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SECTION 68. *Children Who Have Been Convicted and are Serving Sentences.* — Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable laws.

Ostensibly, the only issue that requires resolution in this case is whether or not petitioner is guilty beyond reasonable doubt of the crime of rape as found by both the RTC and the CA. However, with the advent of R.A. No. 9344 while petitioner's case is pending before this Court, a new issue arises, namely, whether the pertinent provisions of R.A. No. 9344 apply to petitioner's case, considering that at the time he committed the alleged rape, he was merely 13 years old.

In sum, we are convinced that petitioner committed the crime of rape against AAA. In a prosecution for rape, the complainant's candor is the single most important factor. If the complainant's testimony meets the test of credibility, the accused can be convicted solely on that basis. [44] The RTC, as affirmed by the CA, did not

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[44] *People of the Philippines v. Jose Magbanua*, G.R. 176265, April 30, 2008.

doubt AAA's credibility, and found no ill motive for her to charge petitioner of the heinous crime of rape and to positively identify him as the malefactor. Both courts also accorded respect to BBB's testimony that he saw petitioner having sexual intercourse with his younger sister. While petitioner asserts that AAA's poverty is enough motive for the imputation of the crime, we discard such assertion for no mother or father like MMM and FFF would stoop so low as to subject their daughter to the tribulations and the embarrassment of a public trial knowing that such a traumatic experience would damage their daughter's psyche and mar her life if the charge is not true.[45] We find petitioner's claim that MMM inflicted the abrasions found by Dr. Jocson in the genitalia of AAA, in order to extort money from petitioner's parents, highly incredible. Lastly, it must be noted that in most cases of rape committed against young girls like AAA who was only 6 years old then, total penetration of the victim's organ is improbable due to the small vaginal opening. Thus, it has been held that actual penetration of the victim's organ or rupture of the hymen is not required.[46] Therefore, it is not necessary for conviction that the petitioner succeeded in having full penetration, because the slightest touching of the lips of the female organ or of the labia of the pudendum constitutes rape.[47]

However, for one who acts by virtue of any of the exempting circumstances, although he commits a crime, by the complete absence of any of the conditions which constitute free will or voluntariness of the act, no criminal liability arises.[48] Therefore,

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[45] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 401.

[46] *People v. Villarama*, 445 Phil. 323, 340 (2003).

[47] *People v. Bascugin*, G.R. No. 144195, May 25, 2004, 429 SCRA 140, 150, citing *People v. Clopino*, 290 SCRA 432 (1998).

[48] REYES, *THE REVISED PENAL CODE*, BOOK I, 14TH ED., 1998, p. 204, citing Guevara.

while there is a crime committed, no criminal liability attaches. Thus, in *Guevarra v. Almodovar*,[49] we held:

> [I]t is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; **the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.** In expounding on intelligence as the second element of *dolus*, Albert has stated:
>
> > "The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability."
>
> It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act.

In its Comment[50] dated April 24, 2008, the OSG posited that petitioner is no longer covered by the provisions of Section 64 of R.A. No. 9344 since as early as 1999, petitioner was convicted by the RTC and the conviction was affirmed by the CA in 2001. R.A. No. 9344 was passed into law in 2006, and with the petitioner now approximately 25 years old, he no longer qualifies as a child as defined by R.A. No. 9344. Moreover, the OSG claimed that the retroactive effect of Section 64 of R.A. No. 9344 is applicable only if the child-accused is still below 18 years old as explained under Sections 67 and 68 thereof. The OSG also asserted that petitioner may avail himself of the provisions of Section 38[51] of R.A. No. 9344

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[49] G.R. No. 75256, January 26, 1989, 169 SCRA 476, 482 (Citations omitted) (Emphasis supplied).

[50] *Rollo*, pp. 128-133.

[51] Sec. 38 of R.A. No. 9344 provides, to wit:

SECTION 38. *Automatic Suspension of Sentence.* — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction,

providing for automatic suspension of sentence if finally found guilty. Lastly, the OSG argued that while it is a recognized principle that laws favorable to the accused may be given retroactive application, such principle does not apply if the law itself provides for conditions for its application.

We are not persuaded.

Section 6 of R.A. No. 9344 clearly and explicitly provides:

SECTION 6. *Minimum Age of Criminal Responsibility*. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Likewise, Section 64 of the law categorically provides that cases of children 15 years old and below, at the time of the commission of the crime, shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer (LSWDO). What is controlling,

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the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense. In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old.[52]

Given this precise statutory declaration, it is imperative that this Court accord retroactive application to the aforequoted provisions of R.A. No. 9344 pursuant to the well-entrenched principle in criminal law - *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to the accused are given retroactive effect.[53] This principle is embodied in Article 22 of the Revised Penal Code, which provides:

> Art. 22. Retroactive effect of penal laws. — Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

We also have extant jurisprudence that the principle has been given expanded application in certain instances involving special laws.[54] R.A. No. 9344 should be no exception.

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[52] Office of the Court Administrator (OCA) Circular No. 115-2006 entitled GUIDELINES ON THE TRANSITORY PROVISIONS OF R.A. 9344 OR THE JUVENILE JUSTICE AND WELFARE ACT, dated August 10, 2006.

[53] *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 718.

[54] *Go v. Dimagiba*, G.R. No. 151876, June 21, 2005, 460 SCRA 451, citing *People v. Langit*, 392 Phil. 94, 119 (2000), *Gonzales v. Court of Appeals*, 343 Phil. 297, 306 (1997), *People v. Ganguso*, 320 Phil. 324, 340 (1995), and *People v. Simon*, 234 SCRA 555, 570 (1994).

This doctrine follows the rule enunciated under Art. 10 of the Revised Penal Code which provides that the provisions thereof apply supplementarily to special laws.

In fact, the legislative intent for R.A. No. 9344's retroactivity is even patent from the deliberations on the bill in the Senate, quoted as follows:

Sections 67-69 On Transitory Provisions

Senator Santiago. In Sections 67 to 69 on *Transitory Provisions*, pages 34 to 35, may I humbly propose that we should insert, after Sections 67 to 69, the following provision:

ALL CHILDREN WHO DO NOT HAVE CRIMINAL LIABILITY UNDER THIS LAW PENDING THE CREATION OF THE OFFICE OF JUVENILE WELFARE AND RESTORATION (OJWR) AND THE LOCAL COUNCIL FOR THE PROTECTION OF CHILDREN (LCPC) WITHIN A YEAR, SHALL BE IMMEDIATELY TRANSFERRED TO DSWD INSTITUTIONS, AND DSWD SHALL UNDERTAKE DIVERSION PROGRAMS FOR THEM, PRIORITIZING THE YOUNGER CHILDREN BELOW 15 YEARS OF AGE AND THE LIGHTER OFFENSES.

The only question will be: Will the DSWD have enough facilities for these adult offenders?

Senator Pangilinan, Mr. President, according to the CWC, the DSWD does not have the capability at the moment. It will take time to develop the capacity.

Senator Santiago. Well, we can say that they shall be transferred whenever the facilities are ready.

Senator Pangilinan. Yes. Mr. President, just a clarification. When we speak here of children who do not have criminal liability under this law, we are referring here to those who currently have criminal liability, **but because of the retroactive effect of this measure, will now be exempt.** It is quite confusing.

Senator Santiago. That is correct.

Senator Pangilinan. In other words, they should be released either to their parents or through a diversion program, Mr. President. That is my understanding.

Senator Santiago. Yes, that is correct. But there will have to be a process of sifting before that. That is why I was proposing that they should be given to the DSWD, which will conduct the sifting

process, except that apparently, the DSWD does not have the physical facilities.

Senator Pangilinan. Mr. President, conceptually, we have no argument. We will now have to just craft it to ensure that the input raised earlier by the good Senator is included and the capacity of the DSWD to be able to absorb these individuals. Likewise, the issue should also be incorporated in the amendment.

The President. Just a question from the Chair. **The moment this law becomes effective, all those children in conflict with the law, who were convicted in the present Penal Code, for example, who will now not be subject to incarceration under this law, will be immediately released. Is that the understanding?**

Senator Pangilinan. **Yes, Mr. President.**

Senator Santiago. They would immediately fall under . . . .

Senator Pangilinan. The diversion requirements, Mr. President.

Senator Santiago. Yes.

The President. But since the facilities are not yet available, what will happen to them?

Senator Santiago. Well, depending on their age, which has not yet been settled . . . provides, for example, for conferencing family mediation, negotiation, apologies, censure, *et cetera*. These methodologies will apply. They do not necessarily have to remain in detention.

Senator Pangilinan. Yes, that is correct, Mr. President. But it will still require some sort of infrastructure, meaning, manpower. The personnel from the DSWD will have to address the counseling. So, there must be a transition in terms of building the capacity and absorbing those who will benefit from this measure.

The President. Therefore, that should be specifically provided for as an amendment.

Senator Pangilinan. That is correct, Mr. President.

The President. All right. Is there any objection? *[Silence]* There being none, the Santiago amendment is accepted.[55]

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PIMENTEL AMENDMENTS

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Senator Pimentel.

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Now, considering that laws are normally prospective, Mr. President, in their application, I would like **to suggest to the Sponsor if he could incorporate some kind of a transitory provision that would make this law apply also to those who might already have been convicted but are awaiting, let us say, execution of their penalties as adults when, in fact, they are juveniles.**

Senator Pangilinan. Yes, Mr. President. **We do have a provision under the Transitory Provisions wherein we address the issue raised by the good Senator, specifically, Section 67.** For example, **"Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer." So that would be giving retroactive effect.**

Senator Pimentel. Of cases that are still to be prosecuted.

Senator Pangilinan. Yes.

Senator Pimentel. What about those that have already been prosecuted? I was trying to cite the instance of juvenile offenders erroneously convicted as adults awaiting execution.

Senator Pangilinan. Mr. President, we are willing to include that as an additional amendment, subject to style.

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[55] Deliberations of the Senate on Senate Bill No. 1402, November 9, 2005, pp. 47-50 (Emphasis supplied).

Senator Pimentel. I would certainly appreciate that because that is a reality that we have to address, otherwise injustice will really be . . .

Senator Pangilinan. Yes, Mr. President, we would also include that as a separate provision.

The President. In other words, even after final conviction if, in fact, the offender is able to prove that at the time of the commission of the offense he is a minor under this law, he should be given the benefit of the law.

Senator Pimentel. Yes, Mr. President. That is correct.

Senator Pangilinan. Yes, Mr. President. We accept that proposed amendment.[56]

The Court is bound to enforce this legislative intent, which is the dominant factor in interpreting a statute. Significantly, this Court has declared in a number of cases, that intent is the soul of the law, *viz.*:

The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.[57]

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[56] Deliberations of the Senate on Senate Bill No. 1402, November 22, 2005, pp. 27-29 (Emphasis supplied).

[57] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006, 504 SCRA 91, 101-102, citing *Inding v. Sandiganbayan*, 434 SCRA 388 (2004), *National Tobacco Administration*

Moreover, penal laws are construed liberally in favor of the accused.[58] In this case, the plain meaning of R.A. No. 9344's unambiguous language, coupled with clear lawmakers' intent, is most favorable to herein petitioner. No other interpretation is justified, for the simple language of the new law itself demonstrates the legislative intent to favor the CICL.

It bears stressing that the petitioner was only 13 years old at the time of the commission of the alleged rape. This was duly proven by the certificate of live birth, by petitioner's own testimony, and by the testimony of his mother. Furthermore, petitioner's age was never assailed in any of the proceedings before the RTC and the CA. Indubitably, petitioner, at the time of the commission of the crime, was below 15 years of age. Under R.A. No. 9344, he is exempted from criminal liability.

However, while the law exempts petitioner from criminal liability for the two (2) counts of rape committed against AAA, Section 6 thereof expressly provides that there is no concomitant exemption from civil liability. Accordingly, this Court sustains the ruling of the RTC, duly affirmed by the CA, that petitioner and/or his parents are liable to pay AAA ₱100,000.00 as civil indemnity. This award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape.

The RTC, however, erred in not separately awarding moral damages, distinct from the civil indemnity awarded to the rape victim. AAA is entitled to moral damages in the amount of ₱50,000.00 for each count of rape, pursuant to Article 2219 of the Civil Code, without the necessity of additional pleading or proof other than the fact of rape. Moral damages are granted

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v. Commission on Audit, 370 Phil. 793 (1999), and *Philippine National Bank v. Office of the President*, 322 Phil. 6, 14, (1996); *Ongsiako v. Gamboa*, 86 Phil. 50, 57 (1950); *Torres v. Limjap*, 56 Phil. 141, 145-146 (1931) citing SUTHERLAND, *STATUTORY CONSTRUCTION*, Vol. II, pp. 693-695.

[58] *Celino, Sr. v. Court of Appeals*, G.R. No. 170562, June 29, 2007, 526 SCRA 195, 202, citing *People v. Ladjaalam*, 395 Phil. 1 (2000).

in recognition of the victim's injury necessarily resulting from the odious crime of rape.[59]

A final note. While we regret the delay, we take consolation in the fact that a law intended to protect our children from the harshness of life and to alleviate, if not cure, the ills of the growing number of CICL and children at risk in our country, has been enacted by Congress. However, it has not escaped us that major concerns have been raised on the effects of the law. It is worth mentioning that in the Rationale for the Proposed Rule on Children Charged under R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, it was found that:

> The passage of Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006 raising the age of criminal irresponsibility from 9 years old to 15 years old has compounded the problem of employment of children in the drug trade several times over. Law enforcement authorities, *Barangay Kagawads* and the police, most particularly, complain that drug syndicates have become more aggressive in using children 15 years old or below as couriers or foot soldiers in the drug trade. They claim that Republic Act No. 9344 has rendered them ineffective in the faithful discharge of their duties in that they are proscribed from taking into custody children 15 years old or below who openly flaunt possession, use and delivery or distribution of illicit drugs, simply because their age exempts them from criminal liability under the new law.[60]

The Court is fully cognizant that our decision in the instant case effectively exonerates petitioner of rape, a heinous crime committed against AAA who was only a child at the tender age of six (6) when she was raped by the petitioner, and one who deserves the law's greater protection. However, this consequence is inevitable because of the language of R.A.

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[59] *People v. Blancaflor*, 466 Phil. 86, 103 (2004), citing *People v. Viajedor*, 401 SCRA 312 (2003).

[60] A.M. No. 07-8-2-SC - Rule on Children Charged Under Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, effective November 5, 2007, p. 23.

No. 9344, the wisdom of which is not subject to review by this Court.[61] Any perception that the result reached herein appears unjust or unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a meaning detached from the manifest intendment and language of the law. Our task is constitutionally confined only to applying the law and jurisprudence to the proven facts, and we have done so in this case.[62]

WHEREFORE, in view of the foregoing, Criminal Case Nos. 98-19083 and 98-19084 filed against petitioner Joemar F. Ortega are hereby *DISMISSED.* Petitioner is hereby referred to the local social welfare and development officer of the locality for the appropriate intervention program. Nevertheless, the petitioner is hereby ordered to pay private complainant AAA, civil indemnity in the amount of One Hundred Thousand Pesos (₱100,000.00) and moral damages in the amount of One Hundred Thousand Pesos (₱100,000.00). No costs.

Let a copy of this Decision be furnished the two Houses of Congress and the Juvenile Justice and Welfare Council (JJWC).

SO ORDERED.

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

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[61] *People v. Garcia*, 424 Phil. 158, 190 (2002), citing *People v. Ladjaalam, supra* note 58.

[62] *Evangelista v. Sistoza*, 414 Phil. 874, 881 (2001), citing *People v. Ladjaalam, id.*

[*] Additional member replacing Associate Justice Ruben T. Reyes per Raffle dated July 30, 2008.

FIRST DIVISION

[G.R. No. 159421. August 20, 2008]

BENEDICTO B. POTENCIANO II, *petitioner, vs.* **GREGORY P. BARNES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF SUMMONS SHOULD BE MADE TO THE DEFENDANT HIMSELF.— Service of summons on the defendant is the means by which the court acquires jurisdiction over the defendant. Summons serves as a notice to the defendant that an action has been commenced against him, thereby giving him the opportunity to be heard on the claim made against him. This is in accordance with the constitutional guaranty of due process of law which requires notice and an opportunity to be heard and to defend oneself. Section 6, Rule 14, of the Rules of Court underscores the importance of actual delivery or tender of the summons to the defendant himself: Section 6. *Service in person on defendant*.— Whenever practicable, the summons shall be served by handling a copy thereof to the defendant in person, or if he refuses to receive and sign for it, by tendering it to him. Under this provision, service of summons should be made on the defendant himself. However, if for justifiable reasons the defendant cannot be served in person within a reasonable time, substituted service of summons is proper.

2. ID.; ID.; ID.; SUBSTITUTED SERVICE OF SUMMONS; REQUISITES.— In this case, there was no attempt whatsoever on the part of the deputy sheriff to serve the summons on Barnes himself, who was the defendant in the complaint. The deputy sheriff just handed a copy of the summons, complaint, and the annexes to a certain Mr. Herrera who is a representative of E. Himan Law Office, which claimed to be the counsel of Barnes. xxx. Clearly, there was no service of summons on Barnes himself. The handling of a copy to Mr. Herrera cannot even qualify as substituted service under Section 7 of Rule 14. The requisites of substituted service of summons are: (1) the defendant cannot

be served personally within a reasonable time; and (2) the impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed, and this statement should be made in the proof of service. In this case, the deputy sheriff never made any effort to serve the summons on Barnes himself. Neither was the copy of the summons served at Barnes' residence nor at his office or regular place of business, as provided under Section 7 of Rule 14. The deputy sheriff just handed a copy of the summons to a messenger of E. Himan Law Office who came to the office of the trial court claiming that E. Himan Law Office was the counsel of Barnes. Giving a copy of the summons to a messenger of a law firm, which was not even the counsel of the defendant, cannot in any way be construed as equivalent to service of summons on the defendant.

3. ID.; ID.; ID.; ID.; ABSENT VALID SERVICE OF SUMMONS ON THE DEFENDANT, THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER THE SAME.— Since there was no service of summons on Barnes, the trial court never acquired jurisdiction over Barnes and the trial court's order of default and the judgment by default are void. The trial court should have refrained from issuing the default order when E. Himan Law Office manifested that it did not represent Barnes who had not engaged its services. It would have been more prudent for the trial court at that point to order the deputy sheriff to serve the summons on Barnes himself by handing it to him personally.

4. ID.; ID.; ID.; DEFENDANT'S VOLUNTARY APPEARANCE IS EQUIVALENT TO SERVICE OF SUMMONS; RECEIPT OF THE SUMMONS BY THE LAW FIRM WHICH IS NOT YET AUTHORIZED TO REPRESENT THE DEFENDANT IN THE CASE AND ITS FILING OF A COMMENT TO THE "MOTION TO DECLARE DEFENDANT IN DEFAULT" CANNOT BE CONSIDERED AS VOLUNTARY APPEARANCE ON THE PART OF THE DEFENDANT.— Other than valid service of summons on the defendant, the trial court can still acquire jurisdiction over the defendant by his voluntary appearance, in accordance with Section 20, Rule 14 of the Rules of Court. However, this is not the case here. There is no evidence on record that Barnes authorized E. Himan Law Office to represent

him in the case. In fact, E. Himan Law Office filed a Comment/ Manifestation to the Motion to Declare Defendant in Default, alleging that Barnes had not yet engaged the services of E. Himan Law Office, which could not therefore represent Barnes. Thus, the receipt of the summons by E. Himan Law Office and its filing of a Comment/Manifestation to the Motion to Declare Defendant in Default cannot be considered as voluntary appearance on the part of Barnes. It was only on 15 August 2001 that Barnes made his first appearance in the trial court by filing a Motion for New Trial through his counsel of record, Diores Law Offices. The motion was precisely to question the validity of the order of default and the subsequent judgment for lack of jurisdiction over the person of the defendant.

5. ID.; JUDGMENT; DEFAULT ORDER; CONSIDERED VOID WHERE THE TRIAL COURT LACKS JURISDICTION OVER THE PERSON OF THE DEFENDANT RESULTING FROM NON-SERVICE OF SUMMONS ON THE SAME.— Thus, since the trial court never acquired jurisdiction over Barnes, either by personal or substituted service of summons or by Barnes' voluntary appearance in court and submission to its authority, the trial court's order of default and the succeeding judgment are void for lack of jurisdiction over the person of the defendant. The trial court should have granted Barnes' Motion for New Trial to afford him due process of law. The appellate court was therefore correct in granting the petition for *certiorari*, prohibition and *mandamus*.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices for petitioner.

Diores Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 26 August 2002 and the Resolution dated 8 August 2003 of the Court of Appeals in CA-G.R. SP No. 68359.

The Facts

In February 2000, GP Barnes Group of Companies hired petitioner Benedicto B. Potenciano II (Potenciano) as a member of the Management Committee of the Barnes Marketing Concept which held office in Ortigas Center, Pasig City. Potenciano was also designated as one of the managers of the London Underground Bar and Restaurant, another member-company of GP Barnes Group of Companies. In February 2001, Potenciano was assigned as Operations Manager of Executive Dinner Club International, also a member-company of GP Barnes Group of Companies.

On 9 May 2001, Potenciano filed with the Regional Trial Court of Muntinlupa City, Branch 276 (trial court) a complaint for damages against respondent Gregory P. Barnes (Barnes), the owner and president of GP Barnes Group of Companies, for alleged harassment and maltreatment.

On 11 May 2001, a certain Jaime S. Herrera (Mr. Herrera), a representative of E. Himan Law Office, secured from the trial court copies of the complaint with annexes and the summons intended for Barnes. Mr. Herrera indicated on the court's copy of the summons that E. Himan Law Office was Barnes' counsel. On the same date, the deputy sheriff issued a Return of Summons.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam, concurring.

On 16 June 2001, Potenciano filed a motion to declare Barnes in default. On 22 June 2001, E. Himan Law Office, represented by Atty. Jose Valentino G. Dave (Atty. Dave), by way of special appearance for the sole purpose of questioning the validity of the service of summons, filed its Comment/Manifestation, manifesting that the law office does not represent Barnes because he has not yet engaged the services of the law office. Hence, the law office has no authority to bind Barnes.

On 12 July 2001, the trial court issued an Order of Default. On 30 July 2001, E. Himan Law Office, represented by Atty. Dave, by way of special appearance, filed an urgent motion for reconsideration of the default order, which the trial court denied.

On 8 August 2001, the trial court rendered a resolution, the dispositive portion of which reads:

> Prescinding, judgment is rendered for Plaintiff [Benedicto B. Potenciano II], declaring Defendant Gregory Paul Barnes, by himself and severally, jointly with his companies, being GP Barnes Group of Companies, Barnes Marketing Concept, London Underground Bar and Restaurant and Executive Dinner Club International, with which Plaintiff was connected or working with, for sometime during his employment with Mr. Barnes, for damages and are therefore directed to personally, jointly and severally pay Plaintiff as follows:
>
> 1. One Million Pesos (₱1,000,000.00) as and by way of moral damages;
> 2. Four Hundred Thousand Pesos (₱400,000.00) as and by way of nominal damages;
> 3. Four Hundred Thousand Pesos (₱400,000.00) as and by way of exemplary damages;
> 4. Two Hundred Thousand Pesos (₱200,000.00) and Three Thousand Pesos (₱3,000.00) per appearance, as and by way of attorney's fees; and
> 5. Costs of the suit.
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> It is SO ORDERED.[3]

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[3] CA *rollo*, pp. 37-38.

On 16 August 2001, Potenciano filed a Motion for Execution Pending Appeal. On 25 August 2001, Barnes, now formally represented by Diores Law Offices, filed a Motion for New Trial as Remedy Against Judgment by Default with Opposition to Execution Pending Appeal, which the trial court denied on 25 September 2001. Barnes moved for reconsideration, which the trial court denied in its Order dated 26 October 2001.

Barnes filed a Petition for *Certiorari*, Prohibition, and *Mandamus*, with prayer for a temporary restraining order or preliminary prohibitory injunction, praying for the nullification of the following orders and resolution of the trial court: (1) Order dated 12 July 2001; (2) Resolution dated 8 August 2001; (3) Order dated 25 September 2001; and (4) Order dated 26 October 2001.

On 26 August 2002, the Court of Appeals rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the PETITION FOR *CERTIORARI*, PROHIBITION and *MANDAMUS* is hereby GRANTED. Accordingly, the Orders dated July 12, 2001, September 25, 2001 and October 26, 2001 and Resolution dated August 8, 2001 are hereby declared NULL AND VOID.
>
> Let the entire record of the case be remanded to the court *a quo* for further proceedings.
>
> The application for issuance of a temporary restraining order and/or preliminary prohibitory injunction is hereby declared moot and academic.
>
> SO ORDERED.[4]

Potenciano moved for reconsideration, which the Court of Appeals denied. Hence, this petition for review.

The Ruling of the Trial Court

In its Order dated 25 September 2001, the trial court denied Barnes' Motion for New Trial. The trial court held that the

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[4] *Rollo*, pp. 40-41.

sheriff did not commit fraud when he certified in his Return of Summons that Barnes was duly served with the summons when a representative of E. Himan Law Office, claiming as counsel of Barnes, secured a copy of the summons and the complaint against Barnes. The trial court ruled that when E. Himan Law Office received the copy of the complaint and the summons, it was acting on behalf of Barnes. Thus, Barnes was duly served with the summons through the voluntary appearance of his counsel on his behalf.

The Ruling of the Court of Appeals

The Court of Appeals held that there was no valid service of summons since neither Mr. Herrera nor E. Himan Law Office was the defendant. When Mr. Herrera, as a representative of E. Himan Law Office, received a copy of the summons, Barnes had not yet engaged the services of E. Himan Law Office. The Court of Appeals ruled that the sheriff did not exert any effort to comply with Section 6, Rule 14 of the Rules of Court, either by handing a copy of the summons to Barnes in person and should Barnes refuse to receive and sign the summons, by tendering it to him. Since there was no valid service of summons on Barnes, the trial court therefore did not acquire jurisdiction over Barnes.

The Issues

Potenciano raises the following issues:

1. Whether the Court of Appeals committed grievous error of law when it impliedly ruled in favor of the propriety of the remedy of special civil action of *certiorari*, prohibition, and *mandamus*; and

2. Whether the Court of Appeals committed grievous error of law when it ruled that the trial court did not acquire jurisdiction over the person of the respondent, and rendered the trial court's proceedings null and void.[5]

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[5] *Id.* at 16.

The Ruling of the Court

We find the petition without merit.

Service of summons on the defendant is the means by which the court acquires jurisdiction over the defendant.[6] Summons serves as a notice to the defendant that an action has been commenced against him, thereby giving him the opportunity to be heard on the claim made against him.[7] This is in accordance with the constitutional guaranty of due process of law which requires notice and an opportunity to be heard and to defend oneself.

Section 6, Rule 14 of the Rules of Court underscores the importance of actual delivery or tender of the summons to the defendant himself:

> Section 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or if he refuses to receive and sign for it, by tendering it to him.

Under this provision, service of summons should be made on the defendant himself. However, if for justifiable reasons the defendant cannot be served in person within a reasonable time, substituted service of summons is proper. Thus, Section 7, Rule 14 of the Rules of Court provides:

> Section 7. *Substituted service.* – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

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[6] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, 14 August 2007, 530 SCRA 170.

[7] *Pioneer International, Ltd. v. Guadiz, Jr.*, G.R. No. 156848, 11 October 2007, 535 SCRA 584; *Alegar Corporation v. Alvarez*, G.R. No. 172555, 10 July 2007, 527 SCRA 289.

In this case, there was no attempt whatsoever on the part of the deputy sheriff to serve the summons on Barnes himself, who was the defendant in the complaint. The deputy sheriff just handed a copy of the summons, complaint, and the annexes to a certain Mr. Herrera who is a representative of E. Himan Law Office, which claimed to be the counsel of Barnes. The Return of Summons of the trial court's deputy sheriff reads:

> THIS IS TO CERTIFY that on May 11, 2001, Mr. Jaime S. Herrera Jr. came to this branch asking a copy of the Summons together with the Complaint and its annexes on the above-entitled case and when asked what is his participation in this case he answered that he is the representative of E. Himan Law Office, the counsel for the defendant Gregory Paul Barnes.
>
> That he was told by the said Law Office to come to Branch 276, R.T.C. Muntinlupa to get the copy of the Summons and the Complaint and its annexes, so that the undersigned give [sic] him the said documents, as evidenced by his signature appearing on the original Summons.
>
> Wherefore said original copy of Summons is hereto attached to the record of the above-entitled case DULY SERVED.[8]

Clearly, there was no service of summons on Barnes himself. The handing of a copy to Mr. Herrera cannot even qualify as substituted service under Section 7 of Rule 14. The requisites of substituted service of summons are: (1) the defendant cannot be served personally within a reasonable time; and (2) the impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed, and this statement should be made in the proof of service.[9] In this case, the deputy sheriff never made any effort to serve the summons on Barnes himself. Neither was the copy of the summons served at Barnes' residence nor at his office or regular place of business, as provided under

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[8] *Rollo*, p. 46.

[9] *Pioneer International, Ltd. v. Guadiz, Jr.*, *supra* note 7; *Air Material Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, 9 October 2007, 535 SCRA 356.

Section 7 of Rule 14. The deputy sheriff just handed a copy of the summons to a messenger of E. Himan Law Office who came to the office of the trial court claiming that E. Himan Law Office was the counsel of Barnes. Giving a copy of the summons to a messenger of a law firm, which was not even the counsel of the defendant, cannot in any way be construed as equivalent to service of summons on the defendant.

Since there was no service of summons on Barnes, the trial court never acquired jurisdiction over Barnes and the trial court's order of default and the judgment by default are void.[10] The trial court should have refrained from issuing the default order when E. Himan Law Office manifested that it did not represent Barnes who had not engaged its services. It would have been more prudent for the trial court at that point to order the deputy sheriff to serve the summons on Barnes himself by handing it to him personally.

Other than valid service of summons on the defendant, the trial court can still acquire jurisdiction over the defendant by his voluntary appearance,[11] in accordance with Section 20, Rule 14 of the Rules of Court.[12] However, this is not the case here. There is no evidence on record that Barnes authorized E. Himan Law Office to represent him in the case. In fact, E. Himan Law Office filed a Comment/Manifestation to the Motion to Declare Defendant in Default, alleging that Barnes had not yet engaged the services of E. Himan Law Office, which could not therefore represent Barnes. Thus, the receipt of the summons by E. Himan Law Office and its filing of a Comment/Manifestation

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[10] *Regner v. Logarta*, G.R. No. 168747, 19 October 2007, 537 SCRA 277.

[11] *Id.*; *Orion Security Corporation v. Kalfam Enterprises, Inc.*, G.R. No. 163287, 27 April 2007, 522 SCRA 617.

[12] Section 20, Rule 14 of the Rules of Court reads:

SEC. 20. *Voluntary appearance*. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

to the Motion to Declare Defendant in Default cannot be considered as voluntary appearance on the part of Barnes.

It was only on 15 August 2001 that Barnes made his first appearance in the trial court by filing a Motion for New Trial through his counsel of record, Diores Law Offices. The motion was precisely to question the validity of the order of default and the subsequent judgment for lack of jurisdiction over the person of the defendant.

This case is similar to the case of *Cavili v. Hon. Vamenta, Jr.*,[13] where summons was served only on one of the defendants. The two other defendants were not served with summonses and neither did they authorize the counsel of the other defendant to represent them in the case. The Court held:

> As shown in the return of the service of summons (Annex "B" of Petition), which is not contested by the respondents, summons was served on defendant Perfecta Cavili in Bayawan, Negros Oriental, but not on defendants Quirino and Primitivo Cavili who were then staying in Kabankalan, Negros Occidental. While Perfecta Cavili's counsel, Atty. Jose Alamillo, filed in behalf of all the three defendants a motion for extension of time to file an answer upon assurance of Perfecta Cavili that she would summon her brothers, Quirino and Primitivo to Bayawan to authorize him to represent them in the case, said **counsel later on manifested before the Court of First Instance of Negros Oriental that he desisted from further appearing in the case since Perfecta Cavili's assurance that he would be authorized by the other two defendants to represent them in the case was never carried out. The motion for extension of time to file an answer cannot, thus, be construed as a voluntary appearance in the case by the defendants Quirino and Primitivo Cavili.**
>
> **Neither can the motion for new trial filed later by Atty. Reuben A. Espancho on behalf of the Cavili brothers cure the jurisdictional defect brought about by the non-service of summons on them precisely because the motion was predicated on such lack and was intended to secure for said defendants the opportunity to be heard in a new**

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[13] 199 Phil. 528 (1982).

trial. It cannot be construed as a waiver of the right to be heard.[14] (Emphasis supplied)

Thus, since the trial court never acquired jurisdiction over Barnes, either by personal or substituted service of summons or by Barnes' voluntary appearance in court and submission to its authority, the trial court's order of default and the succeeding judgment are void for lack of jurisdiction over the person of the defendant. The trial court should have granted Barnes' Motion for New Trial to afford him due process of law. The appellate court was therefore correct in granting the petition for *certiorari*, prohibition and *mandamus*.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 26 August 2002 and the Resolution dated 8 August 2003 of the Court of Appeals in CA-G.R. SP No. 68359.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161713. August 20, 2008]

LEPANTO CONSOLIDATED MINING COMPANY, *petitioner, vs.* **LEPANTO LOCAL STAFF UNION,** *respondent.*

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[14] *Id.* at 530-531.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; IF THE TERMS THEREOF ARE CLEAR AND HAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATION SHALL PREVAIL.— The terms and conditions of a collective bargaining contract constitute the law between the parties. If the terms of the CBA are clear and have no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. The disputed provision of the 4th CBA provides: xxx There is no question that workers are entitled to night shift differential of 20% of the basic rate for work performed during the first shift from 11:00 p.m. to 7:00 a.m. Workers are also entitled to night shift differential of 15% of the basic rate for work performed during the third shift from 3:00 p.m. to 11:00 p.m. The issue is whether workers are entitled to night shift differential for work performed beyond the regular day shift, from 7:00 a.m. to 3:00 p.m. We sustain the interpretation of both the Voluntary Arbitrator and the Court of Appeals. The first paragraph of Section 3 provides that petitioner shall continue to pay night shift differential to workers of the first and third shifts. It does not provide that workers who performed work beyond the second shift shall not be entitled to night shift differential. The inclusion of the third paragraph is not intended to exclude the regular day shift workers from receiving night shift differential for work performed beyond 3:00 p.m. It only provides that the night shift differential pay shall be excluded in the computation of the overtime pay.

2. ID.; ID.; ID.; ID.; THE CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE CONTRACTING PARTIES AS WELL AS THEIR NEGOTIATING AND CONTRACTUAL HISTORY AND EVIDENCE OF PAST PRACTICES SHALL BE CONSIDERED IN THE ASCERTAINMENT OF THE INTENTION OF THE CONTRACTING PARTIES.— It is settled that in order to ascertain the intention of the contracting parties, the Voluntary Arbitrator shall principally consider their contemporaneous and subsequent acts as well as their negotiating and contractual history and evidence of past practices. In this case, the Voluntary Arbitrator and the Court of Appeals both found that

the provision in question was contained in the 1st, 2nd, and 3rd CBAs between petitioner and respondent. During the effectivity of the first three CBAs, petitioner paid night shift differentials to other workers who were members of respondent for work performed beyond 3:00 p.m. Petitioner also paid night shift differential for work beyond 3:00 p.m. during the effectivity of the 4th CBA. Petitioner alleges that the payment of night shift differential for work performed beyond 3:00 p.m. during the 4th CBA was a mistake on the part of its accounting department. However, the Court of Appeals correctly ruled that petitioner failed to present any convincing evidence to prove that the payment was erroneous. In fact, the Court of Appeals found that even after the promulgation of the Voluntary Arbitrator's decision and while the case was pending appeal, petitioner still paid night shift differential for work performed beyond 3:00 p.m. It affirms the intention of the parties to the CBA to grant night shift differential for work performed beyond 3:00 p.m.

APPEARANCES OF COUNSEL

Laogan Baeza Llantino Law Offices for petitioner.
Domogan & Associates Law Offices for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 22 July 2003 Decision[2] and 20 January 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 60644.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 46-54. Penned by Associate Justice Ruben T. Reyes (now a member of this Court) with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin, concurring.

[3] *Id.* at 56.

The Antecedent Facts

Lepanto Consolidated Mining Company[4] (petitioner) is a domestic mining corporation. Lepanto Local Staff Union (respondent) is the duly certified bargaining agent of petitioner's employees occupying staff positions.

On 28 November 1998, petitioner and respondent entered into their fourth Collective Bargaining Agreement (4th CBA) for the period from 1 July 1998 to 30 June 2000. The 4th CBA provides:

ARTICLE VIII – NIGHT SHIFT DIFFERENTIAL

Section 3. Night Differential pay. - The Company shall continue to pay nightshift differential for work during the first and third shifts to all covered employees within the bargaining unit as follows:

For the First Shift (11:00 p.m. to 7:00 a.m.), the differential pay will be 20% of the basic rate. For the Third Shift (3:00 p.m. to 11:00 p.m.), the differential pay will be 15% of the basic rate.

However, for overtime work, which extends beyond the regular day shift (7:00 a.m. to 3:00 p.m.), there [will] be no night differential pay added before the overtime pay is calculated.

ARTICLE XII – RIGHTS, PRIVILEGES AND OTHER BENEFITS

Section 9. Longevity pay – The company shall grant longevity pay of ₱30.00 per month effective July 1, 1998 and every year thereafter.[5]

On 23 April 2000, respondent filed a complaint with the National Conciliation and Mediation Board, Cordillera Administrative Region (NCMB-CAR) alleging that petitioner failed to pay the night shift differential and longevity pay of respondent's members as provided in the 4th CBA. Petitioner and respondent failed to amicably settle the dispute. They agreed

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[4] Referred to as Lepanto Consolidated Mining Corporation by the Voluntary Arbitrator.

[5] CA *rollo*, p. 25.

to submit the issues to Voluntary Arbitrator Norma B. Advincula (Voluntary Arbitrator) for resolution.

The Ruling of the Voluntary Arbitrator

In a Decision dated 26 May 2000,[6] the Voluntary Arbitrator ruled in favor of respondent as follows:

> WHEREFORE, foregoing considered, this Office holds and so orders respondent Lepanto Consolidated Mining Corporation (LCMC) to grant complainant Lepanto Local Staff Union (LLSU) the following benefits:
>
> Longevity pay of ₱30.00 per month which shall be reckoned from July 1, 1998 and every year thereafter in consonance with their contract; and
>
> Night shift differential pay of 15% of the basic rate for hours of work rendered beyond 3:00 p.m. for the following shifts: 7:00 A.M. to 4:00 P.M., 7:30 A.M. to 4:30 P.M. and 8:00 A.M. to 5:00 P.M. to be reckoned from the date of the effectivity of the 4th CBA which was on July 1, 1998.
>
> SO ORDERED.[7]

The Voluntary Arbitrator ruled that petitioner had the legal obligation to pay longevity pay of ₱30 per month effective 1 July 1998. The Voluntary Arbitrator rejected petitioner's contention that "effective" should be understood as the reckoning period from which the employees start earning their right to longevity pay, and that the longevity pay should be paid only on 1 July 1999. The Voluntary Arbitrator ruled that 1 July 1998 was the reckoning date that indicated when the amounts due were to be given.

The Voluntary Arbitrator agreed with respondent that surface workers on the second shift who performed work after 3:00 p.m. should be given an additional night shift differential

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[6] *Id.* at 24-30.

[7] *Id.* at 30.

pay equivalent to 15% of their basic rate. Interpreting paragraph 3, Section 3, Article VIII of the 4th CBA, the Voluntary Arbitrator ruled that it only meant that an employee who extends work beyond the second shift shall receive overtime pay which shall be computed before the night shift differential pay. In other words, it excludes the night shift differential in the computation of overtime pay.

The Voluntary Arbitrator ruled that the inclusion of paragraph 3, Section 3, Article VIII of the 4th CBA disclosed the intent of the parties to grant night shift differential benefits to employees who rendered work beyond the regular day shift. The Voluntary Arbitrator ruled that if the intention were otherwise, paragraph 3 would have been deleted.

Finally, the Voluntary Arbitrator ruled that the respondent's claim for night shift differential arising from the 1st, 2nd, and 3rd CBAs had already prescribed.

Petitioner filed a motion for reconsideration. In her Resolution dated 5 August 2000,[8] the Voluntary Arbitrator denied the motion for reconsideration for lack of merit.

Petitioner filed a petition for review before the Court of Appeals.

The Ruling of the Court of Appeals

In its 22 July 2003 Decision, the Court of Appeals affirmed the Voluntary Arbitrator's Decision.

The Court of Appeals ruled that paragraph 3, Section 3, Article VIII was clear and unequivocal. It grants night shift differential pay to employees of the second shift for work rendered beyond their regular day shift. However, the night shift differential was excluded in the computation of the overtime pay.

The Court of Appeals further ruled that the records of the case revealed that during the effectivity of the 4th CBA, petitioner

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[8] *Id.* at 31-34.

voluntarily complied with paragraph 3, Section 3, Article VIII by paying night shift differential to employees for hours worked beyond 3:00 p.m. Petitioner's act disclosed the parties' intent to include employees in the second shift in the payment of night shift differential. The Court of Appeals rejected petitioner's claim that the payment was due to error and mere inadvertence on the part of petitioner's accounting employees. The Court of Appeals noted that the records revealed that petitioner still continued to pay night shift differential for hours worked beyond 3:00 p.m. after the Voluntary Arbitrator rendered the 26 May 2000 Decision. Thus, petitioner is estopped from claiming erroneous payment.

Petitioner filed a motion for reconsideration. In its 20 January 2004 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals erred in affirming the Voluntary Arbitrator's interpretation of the 4th CBA that the employees in the second shift are entitled to night shift differential.

The Ruling of this Court

The petition has no merit.

The terms and conditions of a collective bargaining contract constitute the law between the parties.[9] If the terms of the CBA are clear and have no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail.[10]

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[9] *Holy Cross of Davao College, Inc. v. Holy Cross of Davao Faculty Union-KAMAPI*, G.R. No. 156098, 27 June 2005, 461 SCRA 319.

[10] *United Kimberly-Clark Employees Union Philippine Transport General Workers' Organization v. Kimberly-Clark Phils., Inc.*, G.R. No. 162965, 6 March 2006, 484 SCRA 187.

The disputed provision of the 4th CBA provides:

ARTICLE VIII – NIGHT SHIFT DIFFERENTIAL

Section 3. Night Differential pay. - The Company shall continue to pay nightshift differential for work during the first and third shifts to all covered employees within the bargaining unit as follows:

For the First Shift (11:00 p.m. to 7:00 a.m.), the differential pay will be 20% of the basic rate. For the Third Shift (3:00 p.m. to 11:00 p.m.), the differential pay will be 15% of the basic rate.

However, for overtime work, which extends beyond the regular day shift (7:00 a.m. to 3:00 p.m.), there [will] be no night differential pay added before the overtime pay is calculated.

There is no question that workers are entitled to night shift differential of 20% of the basic rate for work performed during the first shift from 11:00 p.m. to 7:00 a.m. Workers are also entitled to night shift differential of 15% of the basic rate for work performed during the third shift from 3:00 p.m. to 11:00 p.m. The issue is whether workers are entitled to night shift differential for work performed beyond the regular day shift, from 7:00 a.m. to 3:00 p.m.

We sustain the interpretation of both the Voluntary Arbitrator and the Court of Appeals. The first paragraph of Section 3 provides that petitioner shall continue to pay night shift differential to workers of the first and third shifts. It does not provide that workers who performed work beyond the second shift shall not be entitled to night shift differential. The inclusion of the third paragraph is not intended to exclude the regular day shift workers from receiving night shift differential for work performed beyond 3:00 p.m. It only provides that the night shift differential pay shall be excluded in the computation of the overtime pay.

It is settled that in order to ascertain the intention of the contracting parties, the Voluntary Arbitrator shall principally consider their contemporaneous and subsequent acts as well as their negotiating and contractual history and evidence of

past practices.[11] In this case, the Voluntary Arbitrator and the Court of Appeals both found that the provision in question was contained in the 1st, 2nd, and 3rd CBAs between petitioner and respondent. During the effectivity of the first three CBAs, petitioner paid night shift differentials to other workers who were members of respondent for work performed beyond 3:00 p.m. Petitioner also paid night shift differential for work beyond 3:00 p.m. during the effectivity of the 4th CBA. Petitioner alleges that the payment of night shift differential for work performed beyond 3:00 p.m. during the 4th CBA was a mistake on the part of its accounting department. However, the Court of Appeals correctly ruled that petitioner failed to present any convincing evidence to prove that the payment was erroneous. In fact, the Court of Appeals found that even after the promulgation of the Voluntary Arbitrator's decision and while the case was pending appeal, petitioner still paid night shift differential for work performed beyond 3:00 p.m. It affirms the intention of the parties to the CBA to grant night shift differential for work performed beyond 3:00 p.m.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 22 July 2003 Decision and 20 January 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 60644. Costs against petitioner.

SO ORDERED.

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

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[11] *Id.*

FIRST DIVISION

[G.R. No. 161818. August 20, 2008]

NEW RURAL BANK OF GUIMBA (N.E.), INC., *petitioner, vs.* **FERMINA S. ABAD and RAFAEL SUSAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, DESERVE TO BE RESPECTED AND AFFIRMED, PROVIDED THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.— The petitioner bank would have us delve into the veracity of the documentary evidence and truthfulness of the testimonial evidence presented during the trial of the case at bar. Well-entrenched is the rule that the findings of trial courts which are factual in nature, especially when affirmed by the Court of Appeals, deserve to be respected and affirmed by the Supreme Court, provided they are supported by substantial evidence.

2. ID.; APPEALS; PETITION FOR *CERTIORARI*; ISSUES THAT CAN BE RAISED THEREIN ARE LIMITED TO QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— In a petition for *certiorari* filed under Rule 45 of the 1997 Rules of Civil Procedure, the issues that can be raised are limited to questions of law. xxx We reiterate the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation. This Court cannot

adjudicate which party told the truth regarding the payments made by respondents to the petitioner bank by reviewing and revising the evidence adduced in the trial court. Neither verbal sophistry, nor artful misinterpretations of supposed facts can compel this Court to re-examine findings of fact which were made by the trial court and affirmed by the appellate court. Absent any showing that there are significant issues involving questions of law raised in the petition, we can not give our imprimatur to this appeal.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.
Inocencio B. Garampil, Sr. for respondent.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review on *certiorari* filed by NEW RURAL BANK OF GUIMBA (N.E.), INC. (BANK) against respondent spouses Fermina S. Abad (Fermina) and Rafael Susan under Rule 45 of the 1997 Rules of Civil Procedure.

The facts are as follows:

Respondents are the owners of a parcel of land, located in the Municipality of Guimba, Nueva Ecija, with an area of 2,459 square meters, and listed in the Register of Deeds of Nueva Ecija under TCT No. NT-163716. On February 19, 1982, respondents obtained from the petitioner bank a loan with a face value of ₱4,050.00. As security, the subject lot was mortgaged to the petitioner.

On May 5, 1982, the mortgage was annotated under the Memorandum of Encumbrances on respondents' TCT No. NT-163716.[1]

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[1] Exhibit "A-3"; Original Records, p. 142.

On January 6, 1987, the petitioner bank extrajudicially foreclosed the loan, and the subject lot was sold through public auction. Petitioner bank was the highest bidder, and on January 30, 1987, a certificate of sale was issued in its favor.[2]

On April 6, 1988, petitioner bank executed an Affidavit of Consolidation of Ownership for the property.[3] TCT No. NT-163716 was cancelled and TCT No. NR-20249 was issued in favor of petitioner.

On April 29, 1988, another annotation was appended on TCT No. NT-163716, under Entry No. 3886. It stated that a Special Power of Attorney was executed by respondent Fermina in favor of the petitioner.[4]

On August 12, 1988, respondent spouses filed a Complaint with Prayer for the Issuance of a Writ of Preliminary Injunction,[5] before the Regional Trial Court of Guimba, Nueva Ecija, where they alleged that they had fully paid their debt to the petitioner. They alleged that they had paid the amounts of ₱5,000.00 on August 19,1982, and ₱265.00 on August 21, 1982, as evidenced by receipts.[6] They prayed for the trial court to render judgment:

1. Declaring the plaintiffs (respondents herein) to have fully paid their mortgage loan with the defendant, which mortgage loan has been annotated at the back of TCT No. NT-163716 for the Land Records of Nueva Ecija, under Entry No. 5247;

2. Declaring the Certificate of Sale annotated at the back of TCT No. NT 163716 under Entry No. 15478 null and void and of no force and effect;

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[2] Original Records, p. 20.

[3] Exhibit "A-6", *id.* at 143.

[4] This was recorded in the Notarial Register of Notary Public E. Monteclaro on February 18, 1980. Exhibit "A-7", *id.*

[5] Original Records, pp. 1-8.

[6] Exhibits "B" and "C", *id.* at 144-145.

3. Declaring TCT No. NT 202949 issued in the name of the New Rural Bank of Guimba (N.E.), Inc., null and void and of no effect;

4. Declaring the Special Power of Attorney executed allegedly by the plaintiff, Fermina S. Abad, and annotated at the back of TCT No. 163716 under Entry No. 3886 in favor of the defendant null and void and of no force and effect whatsoever;

5. Reinstating TCT No. NT-163716 in the names of the plaintiffs and declaring all encumbrances at the back of the said title cancelled;

6. Ordering the defendant to pay to the plaintiffs by way of moral, actual and exemplary damages, in the sum of P100,000.00, suffered by plaintiffs due to mental torture and anguish, moral shock, serious anxiety, besmirch (*sic*) reputation, wounded feelings, shame and sleepless nights, as a consequence of the cancellation of plaintiffs' title, TCT No. NT-163716, and in lieu thereof, TCT No. NT-202949 has been issued in the name of the defendant;

7. Ordering the defendant to pay the plaintiffs the sum of P20,000.00 as attorney's fees, plus litigation expenses in the sum of P5,000.00 and appearance fees of P250.00 per hearing, postpone (*sic*) or not;

8. Ordering the defendant to pay the cost of this suit;

9. Declaring the restraining order as herein prayed permanent[.]

In its Answer,[7] the petitioner bank alleged that respondents failed to pay their loan at the agreed schedule. With due notice to all parties concerned, it extrajudicially foreclosed the mortgage on respondents' property. On January 30, 1987, a certificate of sale was issued in its favor as the highest bidder for the foreclosed lot. On February 4, 1987, the sale was annotated at the back of TCT No. NT-163716.

The trial court found that respondents secured a loan from the petitioner in the amount of ₱4,050.00 on February 19, 1982, payable within 6 months. Respondents' payments of ₱5,000.00[8]

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[7] *Id.* at 18-22.

[8] As evidenced by Exhibit "B."

on August 19, 1982 and ₱265.00[9] on August 21, 1982 fully settled their obligation to the petitioner. The phrase "full payment on the balance," written on the receipt for the payment made on August 21, 1982 strengthened the claim of respondents that their mortgage obligation had been paid.

The trial court rejected the claim of the petitioner that the two aforementioned payments were made to settle the obligations of the respondents to Unifarm Agro Trading Center (UNIFARM AGRO) and Unifarm Ricemill and Bonded Warehouse (UNIFARM RICE), that belong to Mr. Domingo Bautista (Bautista) who is the president and general manager of the petitioner bank. The trial court considered the long interval from the time that the debt became due on August 19, 1982, and January 6, 1987, the date of the auction sale for the property in question, as indications that the mortgage obligation had been fully paid by the respondents. The trial court noted that respondent Fermina was barely educated, could hardly understand written English and could only read the dates printed on the receipts. In comparison, Bautista was highly-educated and fully understood all the proceedings. In fine, the trial court gave more credence to the evidence presented by the respondents than the proof offered by the Bank.

The trial court ruled in favor of the respondents, *viz*:

1. Declaring the foreclosure of the real estate mortgage, the auction sale, the certificate of sale and the consolidation of ownership in favor of the defendant New Rural Bank of Guimba, (N.E.), Inc., on Lot 1024-C of the subdivision plan (LRC) Psd-279052 of Guimba Cadastre , and Transfer Certificate of Title No. NT-202949, issued by the Registrer (*sic*) of Deeds for the Province of Nueva Ecija, in the name of the defendant band and/or any certificate of title issued thereafter, if any, covering the same Lot 1024-C, as null and void and without force and effect;

2. Ordering the Register of Deeds for the Province of Nueva Ecija to issue a new certificate of title over the same Lot 1024-C in favor

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[9] As evidenced by Exhibit "C-1".

of the plaintiff Fermina S. Abad, Filipino, of legal age, married to Rafael Susan and a resident of Guimba, Nueva Ecija;

3. Ordering the defendant bank, or any person acting for and its behalf, to deliver the peaceful possession of the said property to the plaintiffs;

4. Ordering the defendant bank, or any person acting for and in its behalf, to pay the plaintiffs ₱10,000.00 as attorney's fees, ₱5,000.00 as litigation expenses, and to pay the costs of this suit.[10]

The petitioner bank appealed the trial court's decision before the Court of Appeals. The decision was affirmed. Its motion for reconsideration was denied.

Thus, petitioner implores this Court to overturn the appellate court decision, based on the following assigned errors:[11]

I. THE COURT OF APPEALS GRAVELY ERRED IN MISAPPLYING THE CONCEPT OF PIERCING THE VEIL OF CORPORATE FICTION TO RULE THAT RESPONDENTS' PAYMENTS COVERED BY RECEIPTS ISSUED BY UNIFARM RICE AND UNIFARM AGRO EVIDENCED PAYMENT OF THEIR LOAN TO PETITIONER.

II. THE COURT OF APPEALS WAS MANIFESTLY MISTAKEN IN CONSIDERING CERTAIN CIRCUMSTANCES AS PROOF OF PAYMENT TO PETITIONER GIVEN THAT THERE WAS NO BASIS FOR SUCH CONSIDERATION.

III. THE COURT OF APPEALS GRAVELY ERRED IN CONSIDERING AS AN "INDICIA OF THE FALSITY" OF PETITIONER'S DEFENSE THE DELAY IN FORECLOSING THE MORTGAGE.

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[10] *Rollo*, pp. 92-93.

[11] *Id.* at 10-11.

The petition is denied.

The petitioner bank would have us delve into the veracity of the documentary evidence and truthfulness of the testimonial evidence presented during the trial of the case at bar. Well-entrenched is the rule that the findings of trial courts which are factual in nature, especially when affirmed by the Court of Appeals, deserve to be respected and affirmed by the Supreme Court, provided they are supported by substantial evidence.[12]

In a petition for *certiorari* filed under Rule 45 of the 1997 Rules of Civil Procedure,[13] the issues that can be raised are limited to questions of law. Section 1, Rule 45 of the Rules of Court specifically provides:

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

We reiterate the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific

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[12] *Francisco v. Court of Appeals*, G.R. No. 116320, November 29, 1999, 319 SCRA 354; *Almeda v. Court of Appeals*, G.R. No. 120853, March 13, 1997, 269 SCRA 643; *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703.

[13] *Mendoza v. Salinas*, G.R. No. 152827, February 6, 2007.

surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[14]

This Court cannot adjudicate which party told the truth regarding the payments made by respondents to the petitioner bank by reviewing and revising the evidence adduced in the trial court. Neither verbal sophistry, nor artful misinterpretations of supposed facts can compel this Court to re-examine findings of fact which were made by the trial court and affirmed by the appellate court. Absent any showing that there are significant issues involving questions of law raised in the petition, we can not give our imprimatur to this appeal.

IN VIEW WHEREOF, the instant petition is *DENIED*. The Decision of the Court of Appeals in C.A. G.R. No. 48239 and of Branch 23 of the Regional Trial Court of Guimba, Nueva Ecija in Civil Case No. 389-G are both affirmed *in toto.*

No pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[14] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 161882, July 8, 2005, 463 SCRA 222, 233.

EN BANC

[G.R. No. 163583. August 20, 2008]

BRITISH AMERICAN TOBACCO, *petitioner, vs.* **JOSE ISIDRO N. CAMACHO, in his capacity as Secretary of the Department of Finance and GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., FORTUNE TOBACCO, CORP., MIGHTY CORPORATION, and JT INTERNATIONAL, S.A., *respondents-in-intervention.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; NO JURISDICTION OVER CASES WHERE THE CONSTITUTIONALITY OF A LAW OR RULE IS CHALLENGED; THE DETERMINATION OF WHETHER A SPECIFIC RULE ISSUED BY AN ADMINISTRATIVE AGENCY CONTRAVENES THE LAW OR THE CONSTITUTION IS WITHIN THE JURISDICTION OF THE REGULAR COURTS; ELABORATED.— The jurisdiction of the Court of Tax Appeals is defined in Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282. xxx While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.

This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice 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.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE DETERMINATION OF WHETHER THE ASSAILED LAW AND ITS IMPLEMENTING RULES AND REGULATIONS CONTRAVENE THE CONSTITUTION IS WITHIN THE JURISDICTION OF REGULAR COURTS.— The petition for injunction filed by petitioner before the RTC is a direct attack on the constitutionality of Section 145(C) of the NIRC, as amended, and the validity of its implementing rules and regulations. In fact, the RTC limited the resolution of the subject case to the issue of the constitutionality of the assailed provisions. The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. Petitioner, therefore, properly filed the subject case before the RTC.

3. CIVIL LAW; ESTOPPEL; ELEMENTS.— Estoppel, an equitable principle rooted **in** natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. The principle is codified in Article 1431 of the Civil Code xxx Estoppel can also be found in Rule 131, Section 2 (a) of the Rules of Court xxx The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and

fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action. In the early case of *Kalalo v. Luz,* the elements of estoppel, as related to the party to be estopped, are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are other than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.

4. ID.; ID.; THE MERE FACT THAT A LAW HAS BEEN RELIED UPON IN THE PAST AND ALL THAT TIME HAS NOT BEEN ATTACKED AS UNCONSTITUTIONAL IS NOT A GROUND FOR CONSIDERING THE PARTY ESTOPPED FROM ASSAILING ITS VALIDITY.— We find that petitioner was not guilty of estoppel. When it made the undertaking to comply with all issuances of the BIR, which at that time it considered as valid, petitioner did not commit any false misrepresentation or misleading act. Indeed, petitioner cannot be faulted for initially undertaking to comply with, and subjecting itself to the operation of Section 145(C), and only later on filing the subject case praying for the declaration of its unconstitutionality when the circumstances change and the law results in what it perceives to be unlawful discrimination. The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in *bona fide* cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later.

5. POLITICAL LAW; EQUAL PROTECTION CLAUSE; RATIONAL BASIS TEST; EXPLAINED.— [W]e have held that "*in our jurisdiction*, the standard and analysis of equal protection challenges in the main have followed the '*rational basis' test*, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution." Within

the present context of tax legislation on sin products which neither contains a suspect classification nor impinges on a fundamental right, the rational-basis test thus finds application. Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.

6. ID.; ID.; CLASSIFICATION WHEN CONSIDERED VALID AND REASONABLE.— A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally to all those belonging to the same class. The first, third and fourth requisites are satisfied.

7. TAXATION; REPUBLIC ACT 8240, AS AMENDED BY REPUBLIC ACT 9334; SECTION 145 THEREOF; CLASSIFICATION FREEZE PROVISION; CANNOT BE CONSIDERED ARBITRARY, OR MOTIVATED BY A HOSTILE OR OPPRESSIVE ATTITUDE TO UNDULY FAVOR OLDER BRANDS OVER NEWER BRANDS.— [I]t is quite evident that the *classification freeze provision* could hardly be considered arbitrary, or motivated by a hostile or oppressive attitude to unduly favor older brands over newer brands. Congress was unequivocal in its unwillingness to delegate the power to periodically adjust the excise tax rate and tax brackets as well as to periodically resurvey and reclassify the cigarette brands based on the increase in the consumer price index to the DOF and the BIR. Congress doubted the constitutionality of such delegation of power, and likewise, considered the ethical

implications thereof. Curiously, the *classification freeze provision* was put in place of the periodic adjustment and reclassification provision because of the belief that the latter would foster an anti-competitive atmosphere in the market. Yet, as it is, this same criticism is being foisted by petitioner upon the *classification freeze provision*. [T]he *classification freeze provision* was in the main the result of Congress's earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other state interests. In particular, the questioned provision addressed Congress's administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas for abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.

8. ID.; ID.; ID.; ADMINISTRATIVE CONCERNS MAY PROVIDE A LEGITIMATE, RATIONAL BASIS FOR LEGISLATIVE CLASSIFICATION.— [C]ongress sought to, among others, simplify the whole tax system for sin products to remove these potential areas of abuse and corruption from both the side of the taxpayer and the government. Without doubt, the *classification freeze provision* was an integral part of this overall plan. This is in line with one of the avowed objectives of the assailed law "to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion." RA 9334 did not alter this *classification freeze provision* of RA 8240. On the contrary, Congress affirmed this freezing mechanism by clarifying the wording of the law. We can thus reasonably conclude, as the deliberations on RA 9334 readily show, that the administrative concerns in tax administration, which moved Congress to enact the *classification freeze provision* in RA 8240, were merely continued by RA 9334. Indeed, administrative concerns may provide a legitimate, rational basis for legislative classification. In the case at bar, these administrative concerns in the measurement and collection of excise taxes on sin products are readily apparent as afore-discussed.

9. ID.; ID.; ID.; ID.; PURPOSE THEREOF, EXPLAINED; NO DENIAL OF THE EQUAL PROTECTION OF THE LAWS WHERE THE RATIONAL-BASIS TEST IS AMPLY SATISFIED.— Aside from the major concern regarding the elimination of potential areas for abuse and corruption from the tax administration of sin products, the legislative deliberations also show that the *classification freeze provision* was intended to generate buoyant and stable revenues for government. With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail prices in the future and, as a result, the amount of taxes due from them would remain predictable. The *classification freeze provision* would, thus, aid in the revenue planning of the government. All in all, the *classification freeze provision* addressed Congress's administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. *Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied.*

10. POLITICAL LAW; EQUAL PROTECTION CLAUSE; WHERE THERE IS A CLAIM OF BREACH THEREOF AND OF THE DUE PROCESS CLAUSE, CONSIDERING THAT THEY ARE NOT FIXED RULES BUT RATHER BROAD STANDARDS, THERE IS A NEED FOR PROOF OF SUCH PERSUASIVE CHARACTER AS WOULD LEAD TO SUCH A CONCLUSION.— [P]etitioner generalizes that the differential tax treatment arising from the *classification freeze provision* adversely impacts the fairness of the playing field in the industry, particularly, between older and newer brands. Thus, it is virtually impossible for new brands to enter the market. Petitioner did not clearly demonstrate the exact extent of such impact. It has not been shown that the net retail prices of other older brands previously classified under this classification system have already pierced their tax brackets, and, if so, how

this has affected the overall competition in the market. Further, it does not necessarily follow that newer brands cannot compete against older brands because price is not the only factor in the market as there are other factors like consumer preference, brand loyalty, *etc*. In other words, even if the newer brands are priced higher due to the differential tax treatment, it does not mean that they cannot compete in the market especially since cigarettes contain addictive ingredients so that a consumer may be willing to pay a higher price for a particular brand solely due to its unique formulation. It may also be noted that in 2003, the BIR surveyed 29 new brands that were introduced in the market after the effectivity of RA 8240 on January 1, 1997, thus negating the sweeping generalization of petitioner that the *classification freeze provision* has become an insurmountable barrier to the entry of new brands. Verily, where there is a claim of breach of the due process and equal protection clauses, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.

11. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; CANNOT INQUIRE INTO THE WISDOM OF THE LAW; DISCUSSED; CLASSIFICATION FREEZE PROVISION DOES NOT UNDULY FAVOR OLDER BRANDS OVER NEWER BRANDS.— Whether Congress acted improvidently in derogating, to a limited extent, the state's interest in promoting fair competition among the players in the industry, while pursuing other state interests regarding the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues through the *classification freeze provision*, and whether the questioned provision is the best means to achieve these state interests, necessarily go into the wisdom of the assailed law which we cannot inquire into, much less overrule. The *classification freeze provision* has not been shown to be precipitated by a veiled attempt, or hostile attitude on the part of Congress to unduly favor older brands over newer brands. On the contrary, we must reasonably assume, owing to the respect due a co-equal branch of government and as revealed by the Congressional

deliberations, that the enactment of the questioned provision was impelled by an earnest desire to improve the efficiency and effectivity of the tax administration of sin products. For as long as the legislative classification is rationally related to furthering some legitimate state interest, as here, the rational-basis test is satisfied and the constitutional challenge is perfunctorily defeated.

12. ID.; ID.; ID.; ID.; THE JUDICIARY DOES NOT SETTLE POLICY ISSUES; ELABORATED.— We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power. Thus, the legislative classification under the *classification freeze provision*, after having been shown to be rationally related to achieve certain legitimate state interests and done in good faith, must, perforce, end our inquiry.

13. ID.; ID.; ID.; ID.; CANNOT DECLARE A STATUTE UNCONSTITUTIONAL MERELY BECAUSE IT CAN BE IMPROVED OR THAT IT DOES NOT TEND TO ACHIEVE ALL OF ITS STATED OBJECTIVES.— Concededly, the finding that the assailed law seems to derogate, to a limited extent, one of its avowed objectives (*i.e.* promoting fair competition among the players in the industry) would suggest that, by Congress's own standards, the current excise tax system on sin products is imperfect. But, certainly, we cannot declare a statute unconstitutional merely because it can be improved or that it does not tend to achieve all of its stated objectives. This is especially true for tax legislation which simultaneously addresses and impacts multiple state interests. Absent a clear showing of breach of constitutional limitations, Congress, owing to its vast experience and expertise in the field of taxation, must

be given sufficient leeway to formulate and experiment with different tax systems to address the complex issues and problems related to tax administration. Whatever imperfections that may occur, the same should be addressed to the democratic process to refine and evolve a taxation system which ideally will achieve most, if not all, of the state's objectives.

14. TAXATION; NATIONAL INTERNAL REVENUE CODE; UNLESS EXPRESSLY GRANTED, THE COMMISSIONER OF INTERNAL REVENUE HAS NO POWER TO RECLASSIFY OR UPDATE THE CLASSIFICATION OF NEW BRANDS EVERY TWO YEARS OR EARLIER; THE POWER TO RECLASSIFY CIGARETTE BRANDS IS A PREROGATIVE OF THE LEGISLATURE.— It is clear that Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former.

15. ID.; SECTION 145 OF REPUBLIC ACT NO. 8240, AS AMENDED BY REPUBLIC ACT 9334; CLASSIFICATION FREEZE PROVISION; UNIFORMLY APPLIES TO ALL NEWLY INTRODUCED BRANDS IN THE MARKET, WHETHER IMPORTED OR LOCALLY MANUFACTURED.— The *classification freeze provision* uniformly applies to all newly introduced brands in the market, whether imported or locally manufactured. It does not purport to single out imported cigarettes in order to unduly favor locally produced ones. Further, petitioner's evidence was anchored on the alleged unequal tax treatment between old and new brands which involves a different frame of reference *vis-à-vis* local and imported products. Petitioner has, therefore, failed to clearly prove its case, both factually and legally, within the parameters of the GATT.

16. STATUTORY CONSTRUCTION; STATUTES; IRRECONCILABLE CONFLICT BETWEEN STATUTES; REPUBLIC ACT 8240, AS AMENDED BY REPUBLIC ACT 9334 PREVAILS OVER GATT EITHER AS A LATER ENACTMENT BY CONGRESS OR AS A SPECIAL LAW DEALING WITH THE TAXATION OF SIN PRODUCTS.— [E]ven assuming *arguendo* that petitioner was able to prove that the *classification freeze provision* violates the GATT, the outcome would still be the same. The GATT is a treaty duly ratified by the Philippine Senate and under Article VII, Section 21 of the Constitution, it merely acquired the status of a statute. Applying the basic principles of statutory construction in case of irreconcilable conflict between statutes, RA 8240, as amended by RA 9334, would prevail over the GATT either as a later enactment by Congress or as a special law dealing with the taxation of sin products.

APPEARANCES OF COUNSEL

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Estelito P. Mendoza & Ma. Claudette A. Dela Cerna for intervenor Fortune Tobacco Corp.

Ocampo & Ocampo for Mighty Corp.

Sycip Salazar Hernandez & Gatmaitan for Intervenor JT International.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review assails the validity of: (1) Section 145 of the National Internal Revenue Code (NIRC), as recodified by Republic Act (RA) 8424; (2) RA 9334, which further amended Section 145 of the NIRC on January 1, 2005; (3) Revenue Regulations Nos. 1-97, 9-2003, and 22-2003; and (4) Revenue Memorandum Order No. 6-2003. Petitioner argues that the said provisions are violative of the equal protection and uniformity clauses of the Constitution.

RA 8240, entitled "An Act Amending Sections 138, 139, 140, and 142 of the NIRC, as Amended and For Other Purposes," took effect on January 1, 1997. In the same year, Congress passed RA 8424 or The Tax Reform Act of 1997, re-codifying the NIRC. Section 142 was renumbered as Section 145 of the NIRC.

Paragraph (c) of Section 145 provides for four tiers of tax rates based on the **net retail price** per pack of cigarettes. To determine the applicable tax rates of existing cigarette brands, a survey of the net retail prices per pack of cigarettes was conducted as of October 1, 1996, the results of which were embodied in **Annex "D"** of the NIRC as the duly registered, existing or active brands of cigarettes.

Paragraph (c) of Section 145,[1] states –

SEC. 145. *Cigars and cigarettes*. –

x x x x x x x x x

(c) *Cigarettes packed by machine*. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Thirteen pesos and forty-four centavos (₱13.44) per pack;

(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (10.00) per pack, the tax shall be Eight pesos and ninety-six centavos (₱8.96) per pack;

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos and sixty centavos (₱5.60) per pack;

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[1] Based on the updated rates, effective January 1, 2000.

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso and twelve centavos (₱1.12) per pack.

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of this Act shall be taxed under the highest classification of any variant of that brand.

x x x x x x x x x

New brands shall be classified according to their **current net retail price.**

For the above purpose, **net retail price** shall mean the price at which the cigarette is sold on retail in 20 major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the net retail price shall mean the price at which the cigarette is sold in five major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The **classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D" of this Act, shall remain in force until revised by Congress.** (Emphasis supplied)

As such, new brands of cigarettes shall be taxed according to their **current net retail price** while existing or "old" brands shall be taxed based on their **net retail price as of October 1, 1996**.

To implement RA 8240, the Bureau of Internal Revenue (BIR) issued **Revenue Regulations No. 1-97**,[2] which classified the existing brands of cigarettes as those duly registered or active brands prior to January 1, 1997. New brands, or those registered after January 1, 1997, shall be initially assessed at their suggested retail price until such time that the appropriate survey to determine their current net retail price is conducted. Pertinent portion of the regulations reads –

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[2] *Rollo*, pp. 50-113.

SECTION 2. *Definition of Terms*.

x x x x x x x x x

3. *Duly registered or existing brand of cigarettes* – shall include duly registered, existing or active brands of cigarettes, prior to January 1, 1997.

x x x x x x x x x

6. *New Brands* – shall mean brands duly registered after January 1, 1997 and shall include duly registered, inactive brands of cigarette not sold in commercial quantity before January 1, 1997.

SECTION 4. *Classification and Manner of Taxation of Existing Brands, New Brands and Variant of Existing Brands*.

x x x x x x x x x

B. *New Brand*

New brands shall be classified according to their current net retail price. In the meantime that the current net retail price has not yet been established, the suggested net retail price shall be used to determine the specific tax classification. Thereafter, a survey shall be conducted in 20 major supermarkets or retail outlets in Metro Manila (for brands of cigarette marketed nationally) or in five (5) major supermarkets or retail outlets in the region (for brands which are marketed only outside Metro Manila) at which the cigarette is sold on retail in reams/cartons, three (3) months after the initial removal of the new brand to determine the actual net retail price excluding the excise tax and value added tax which shall then be the basis in determining the specific tax classification. In case the current net retail price is higher than the suggested net retail price, the former shall prevail. Any difference in specific tax due shall be assessed and collected inclusive of increments as provided for by the National Internal Revenue Code, as amended.

In June 2001, petitioner British American Tobacco introduced into the market Lucky Strike Filter, Lucky Strike Lights and Lucky Strike Menthol Lights cigarettes, with a suggested retail price of ₱9.90 per pack.[3] Pursuant to Sec. 145 (c) quoted above,

[3] Annex "A," Revenue Regulations No. 22-2003.

the Lucky Strike brands were initially assessed the excise tax at ₱8.96 per pack.

On February 17, 2003, **Revenue Regulations No. 9-2003**,[4] amended Revenue Regulations No. 1-97 by providing, among others, a periodic review every two years or earlier of the current net retail price of new brands and variants thereof for the purpose of establishing and updating their tax classification, thus:

> For the purpose of establishing or updating the tax classification of new brands and variant(s) thereof, their current net retail price shall be reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner. However, notwithstanding any increase in the current net retail price, the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations.

Pursuant thereto, **Revenue Memorandum Order No. 6-2003**[5] was issued on March 11, 2003, prescribing the guidelines and procedures in establishing current net retail prices of new brands of cigarettes and alcohol products.

Subsequently, **Revenue Regulations No. 22-2003**[6] was issued on August 8, 2003 to implement the revised tax classification of certain new brands introduced in the market after January 1, 1997, based on the survey of their current net retail price. The survey revealed that Lucky Strike Filter, Lucky Strike Lights, and Lucky Strike Menthol Lights, are sold at the current net retail price of ₱22.54, P22.61 and ₱21.23, per pack, respectively.[7] Respondent Commissioner of the Bureau of Internal Revenue thus recommended the applicable tax rate of ₱13.44 per pack inasmuch as Lucky Strike's average net retail price is above ₱10.00 per pack.

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[4] *Rollo*, pp. 114-120.

[5] *Id.* at 121-134.

[6] *Id.* at 135.

[7] *Id.* at 136.

Thus, on September 1, 2003, petitioner filed before the Regional Trial Court (RTC) of Makati, Branch 61, a petition for injunction with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as Civil Case No. 03-1032. Said petition sought to enjoin the implementation of Section 145 of the NIRC, Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003 on the ground that they discriminate against new brands of cigarettes, in violation of the equal protection and uniformity provisions of the Constitution.

Respondent Commissioner of Internal Revenue filed an Opposition[8] to the application for the issuance of a TRO. On September 4, 2003, the trial court denied the application for TRO, holding that the courts have no authority to restrain the collection of taxes.[9] Meanwhile, respondent Secretary of Finance filed a Motion to Dismiss,[10] contending that the petition is premature for lack of an actual controversy or urgent necessity to justify judicial intervention.

In an Order dated March 4, 2004, the trial court denied the motion to dismiss and issued a writ of preliminary injunction to enjoin the implementation of Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003.[11] Respondents filed a Motion for Reconsideration[12] and Supplemental Motion for Reconsideration.[13] At the hearing on the said motions, petitioner and respondent Commissioner of Internal Revenue stipulated that the only issue in this case is the constitutionality of the assailed law, order, and regulations.[14]

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[8] *Id.* at 162-166.

[9] *Id.* at 167-168.

[10] *Id.* at 169-181.

[11] *Id.* at 201-203.

[12] *Id.* at 204-218.

[13] *Id.* at 219-233.

[14] *Id.* at 281.

On May 12, 2004, the trial court rendered a decision[15] upholding the constitutionality of Section 145 of the NIRC, Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003. The trial court also lifted the writ of preliminary injunction. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant Petition is hereby DISMISSED for lack of merit. The Writ of Preliminary Injunction previously issued is hereby lifted and dissolved.
>
> SO ORDERED.[16]

Petitioner brought the instant petition for review directly with this Court on a pure question of law.

While the petition was pending, RA 9334 (An Act Increasing The Excise Tax Rates Imposed on Alcohol And Tobacco Products, Amending For The Purpose Sections 131, 141, 143, 144, 145 and 288 of the NIRC of 1997, As Amended), took effect on January 1, 2005. The statute, among others,–

> (1) increased the excise tax rates provided in paragraph (c) of Section 145;
>
> (2) mandated that new brands of cigarettes shall initially be classified according to their suggested net retail price, until such time that their correct tax bracket is finally determined under a specified period and, after which, their classification shall remain in force until revised by Congress;
>
> (3) retained Annex "D" as tax base of those surveyed as of October 1, 1996 including the classification of brands for the same products which, although not set forth in said Annex "D," were registered on or before January 1, 1997 and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act. Said

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

[16] *Id.* at 47; penned by Judge Romeo F. Barza.

classification shall remain in force until revised by Congress; and

(4) provided a legislative freeze on brands of cigarettes introduced between the period January 2, 1997[17] to December 31, 2003, such that said cigarettes shall remain in the classification under which the BIR has determined them to belong as of December 31, 2003, until revised by Congress.

Pertinent portions, of RA 9334, provides:

SEC. 145. Cigars and Cigarettes. –

x x x x x x x x x

(C) Cigarettes Packed by Machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be:

Effective on January 1, 2005, Two pesos (₱2.00) per pack;

Effective on January 1, 2007, Two pesos and twenty-three centavos (₱2.23) per pack;

Effective on January 1, 2009, Two pesos and forty-seven centavos (₱2.47) per pack; and

Effective on January 1, 2011, Two pesos and seventy-two centavos (₱2.72) per pack.

(2) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be:

Effective on January 1, 2005, Six pesos and thirty-five centavos (₱6.35) per pack;

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[17] New brands as defined are those introduced into the market after the effectivity of R.A. 8240 on January 1, 1997, meaning, on January 2, 1997; while existing brands for purposes of inclusion in Annex "D" are those registered on or before January 1, 1997.

Effective on January 1, 2007, Six pesos and seventy-four centavos (P6.74) per pack;

Effective on January 1, 2009, Seven pesos and fourteen centavos (₱7.14) per pack; and

Effective on January 1, 2011, Seven pesos and fifty-six centavos (₱7.56) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be:

Effective on January 1, 2005, Ten pesos and thirty-five centavos (10.35) per pack;

Effective on January 1, 2007, Ten pesos and eighty-eight centavos (₱10.88) per pack;

Effective on January 1, 2009, Eleven pesos and forty-three centavos (₱11.43) per pack; and

Effective on January 1, 2011, Twelve pesos (₱12.00) per pack.

(4) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be:

Effective on January 1, 2005, Twenty-five pesos (₱25.00) per pack;

Effective on January 1, 2007, Twenty-six pesos and six centavos (₱26.06) per pack;

Effective on January 1, 2009, Twenty-seven pesos and sixteen centavos (₱27.16) per pack; and

Effective on January 1, 2011, Twenty-eight pesos and thirty centavos (₱28.30) per pack.

x x x x x x x x x

New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.

New brands shall mean a brand registered after the date of effectivity of R.A. No. 8240.

Suggested net retail price shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified; **Provided however, That brands of cigarettes introduced in the domestic market between January 1, 1997** [should be January 2, 1997] **and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.**

Net retail price, as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the cigarette is sold in retail in at least twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the "net retail price" shall mean the price at which the cigarette is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and value-added tax.

The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D", including the classification of brands for the same products which, although not set forth in said Annex "D", were registered and were

being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress. (Emphasis added)

Under RA 9334, the excise tax due on petitioner's products was increased to ₱25.00 per pack. In the implementation thereof, respondent Commissioner assessed petitioner's importation of 911,000 packs of Lucky Strike cigarettes at the increased tax rate of ₱25.00 per pack, rendering it liable for taxes in the total sum of ₱22,775,000.00.[18]

Hence, petitioner filed a Motion to Admit Attached Supplement[19] and a Supplement[20] to the petition for review, assailing the constitutionality of RA 9334 insofar as it retained Annex "D" and praying for a downward classification of Lucky Strike products at the bracket taxable at ₱8.96 per pack. Petitioner contended that the continued use of Annex "D" as the tax base of existing brands of cigarettes gives undue protection to said brands which are still taxed based on their price as of October 1996 notwithstanding that they are now sold at the same or even at a higher price than new brands like Lucky Strike. Thus, old brands of cigarettes such as Marlboro and Philip Morris which, like Lucky Strike, are sold at or more than ₱22.00 per pack, are taxed at the rate of ₱10.88 per pack, while Lucky Strike products are taxed at ₱26.06 per pack.

In its Comment to the supplemental petition, respondents, through the Office of the Solicitor General (OSG), argued that the passage of RA 9334, specifically the provision imposing a legislative freeze on the classification of cigarettes introduced into the market between January 2, 1997 and December 31, 2003, rendered the instant petition academic. The OSG claims that the provision in Section 145, as amended by RA 9334,

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[18] *Id.* at 828.

[19] *Id.* at 805-814.

[20] *Id.* at 818-836.

prohibiting the reclassification of cigarettes introduced during said period, "cured' the perceived defect of Section 145 considering that, like the cigarettes under Annex "D", petitioner's brands and other brands introduced between January 2, 1997 and December 31, 2003, shall remain in the classification under which the BIR has placed them and only Congress has the power to reclassify them.

On March 20, 2006, Philip Morris Philippines Manufacturing Incorporated filed a Motion for Leave to Intervene with attached Comment-in-Intervention.[21] This was followed by the Motions for Leave to Intervene of Fortune Tobacco Corporation,[22] Mighty Corporation,[23] and JT International, S.A., with their respective Comments-in-Intervention. The Intervenors claim that they are parties-in-interest who stand to be affected by the ruling of the Court on the constitutionality of Section 145 of the NIRC and its Annex "D" because they are manufacturers of cigarette brands which are included in the said Annex. Hence, their intervention is proper since the protection of their interest cannot be addressed in a separate proceeding.

According to the Intervenors, no inequality exists because cigarettes classified by the BIR based on their net retail price as of December 31, 2003 now enjoy the same *status quo* provision that prevents the BIR from reclassifying cigarettes included in Annex "D". It added that the Court has no power to pass upon the wisdom of the legislature in retaining Annex "D" in RA 9334; and that the nullification of said Annex would bring about tremendous loss of revenue to the government, chaos in the collection of taxes, illicit trade of cigarettes, and cause decline in cigarette demand to the detriment of the farmers who depend on the tobacco industry.

Intervenor Fortune Tobacco further contends that petitioner is estopped from questioning the constitutionality of Section

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[21] *Id.* at 912-952.

[22] *Id.* at 992-1001.

[23] *Id.* at 1116-1119.

145 and its implementing rules and regulations because it entered into the cigarette industry fully aware of the existing tax system and its consequences. Petitioner imported cigarettes into the country knowing that its suggested retail price, which will be the initial basis of its tax classification, will be confirmed and validated through a survey by the BIR to determine the correct tax that would be levied on its cigarettes.

Moreover, Fortune Tobacco claims that the challenge to the validity of the BIR issuances should have been brought by petitioner before the Court of Tax Appeals (CTA) and not the RTC because it is the CTA which has exclusive appellate jurisdiction over decisions of the BIR in tax disputes.

On August 7, 2006, the OSG manifested that it interposes no objection to the motions for intervention.[24] Therefore, considering the substantial interest of the intervenors, and in the higher interest of justice, the Court admits their intervention.

Before going into the substantive issues of this case, we must first address the matter of jurisdiction, in light of Fortune Tobacco's contention that petitioner should have brought its petition before the Court of Tax Appeals rather than the regional trial court.

The jurisdiction of the Court of Tax Appeals is defined in Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:

Sec. 7. *Jurisdiction.* — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

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[24] *Id.* at 1157.

> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx.[25]

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice 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.[26]

In *Drilon v. Lim*,[27] it was held:

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[25] Republic Act No. 9282.

[26] *Smart Communications, Inc. v. National Telecommunications Commission,* G.R. No. 151908, August 12, 2003, 408 SCRA 678, 689.

[27] G.R. No. 112497, August 4, 1994, 235 SCRA 135.

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

The petition for injunction filed by petitioner before the RTC is a direct attack on the constitutionality of Section 145(C) of the NIRC, as amended, and the validity of its implementing rules and regulations. In fact, the RTC limited the resolution of the subject case to the issue of the constitutionality of the assailed provisions. The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.[28] Petitioner, therefore, properly filed the subject case before the RTC.

We come now to the issue of whether petitioner is estopped from assailing the authority of the Commissioner of Internal Revenue. Fortune Tobacco raises this objection by pointing out that when petitioner requested the Commissioner for a ruling that its Lucky Strike Soft Pack cigarettes was a "new brand"

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[28] *Smart Communications, Inc. v. National Telecommunications Commission, supra.*

rather than a variant of an existing brand, and thus subject to a lower specific tax rate, petitioner executed an undertaking to comply with the procedures under existing regulations for the assessment of deficiency internal revenue taxes.

Fortune Tobacco argues that petitioner, after invoking the authority of the Commissioner of Internal Revenue, cannot later on turn around when the ruling is adverse to it.

Estoppel, an equitable principle rooted **in** natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[29] The principle is codified in Article 1431 of the Civil Code, which provides:

> Through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

Estoppel can also be found in Rule 131, Section 2 (a) of the Rules of Court, *viz*:

> Sec. 2. *Conclusive presumptions*. — The following are instances of conclusive presumptions:
>
> (a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it.

The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other

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[29] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 324.

would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[30]

In the early case of *Kalalo v. Luz*,[31] the elements of estoppel, as related to the party to be estopped, are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are other than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.

We find that petitioner was not guilty of estoppel. When it made the undertaking to comply with all issuances of the BIR, which at that time it considered as valid, petitioner did not commit any false misrepresentation or misleading act. Indeed, petitioner cannot be faulted for initially undertaking to comply with, and subjecting itself to the operation of Section 145(C), and only later on filing the subject case praying for the declaration of its unconstitutionality when the circumstances change and the law results in what it perceives to be unlawful discrimination. The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in *bona fide* cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later.[32]

Now to the substantive issues.

To place this case in its proper context, we deem it necessary to first discuss how the assailed law operates in order to identify,

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[30] *Philippine Bank of Communication v. Court of Appeals*, 352 Phil. 1, 9 (1998).

[31] G.R. No. L-27782, July 31, 1970, 34 SCRA 377, 347.

[32] *People v. Vera*, 65 Phil. 56, 93 (1937).

with precision, the specific provisions which, according to petitioner, have created a grossly discriminatory classification scheme between old and new brands. The pertinent portions of RA 8240, as amended by RA 9334, are reproduced below for ready reference:

SEC. 145. Cigars and Cigarettes. –

x x x x x x x x x

(C) Cigarettes Packed by Machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be:

Effective on January 1, 2005, Two pesos (₱2.00) per pack;

Effective on January 1, 2007, Two pesos and twenty-three centavos (₱2.23) per pack;

Effective on January 1, 2009, Two pesos and forty-seven centavos (₱2.47) per pack; and

Effective on January 1, 2011, Two pesos and seventy-two centavos (₱2.72) per pack.

(2) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be:

Effective on January 1, 2005, Six pesos and thirty-five centavos (₱6.35) per pack;

Effective on January 1, 2007, Six pesos and seventy-four centavos (₱6.74) per pack;

Effective on January 1, 2009, Seven pesos and fourteen centavos (₱7.14) per pack; and

Effective on January 1, 2011, Seven pesos and fifty-six centavos (₱7.56) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be:

Effective on January 1, 2005, Ten pesos and thirty-five centavos (10.35) per pack;

Effective on January 1, 2007, Ten pesos and eighty-eight centavos (₱10.88) per pack;

Effective on January 1, 2009, Eleven pesos and forty-three centavos (₱11.43) per pack; and

Effective on January 1, 2011, Twelve pesos (₱12.00) per pack.

(4) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱ 10.00) per pack, the tax shall be:

Effective on January 1, 2005, Twenty-five pesos (₱25.00) per pack;

Effective on January 1, 2007, Twenty-six pesos and six centavos (₱26.06) per pack;

Effective on January 1, 2009, Twenty-seven pesos and sixteen centavos (₱27.16) per pack; and

Effective on January 1, 2011, Twenty-eight pesos and thirty centavos (₱28.30) per pack.

x x x x x x x x x

New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.

New brands shall mean a brand registered after the date of effectivity of R.A. No. 8240.

Suggested net retail price shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After

the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified; Provided however, That brands of cigarettes introduced in the domestic market between January 1, 1997 [should be January 2, 1997] and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

Net retail price, as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the cigarette is sold in retail in at least twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the "net retail price" shall mean the price at which the cigarette is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and value-added tax.

The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D", including the classification of brands for the same products which, although not set forth in said Annex "D", were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.

As can be seen, the law creates a four-tiered system which we may refer to as the low-priced,[33] medium-priced,[34] high-

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[33] If the net retail price (excluding the excise tax and the value-added tax) of a brand is below Five pesos (₱5.00) per pack.

[34] If the net retail price (excluding the excise tax and the value-added tax) of a brand is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack.

priced,[35] and premium-priced[36] tax brackets. When a brand is introduced in the market, the current net retail price is determined through the aforequoted specified procedure. The current net retail price is then used to classify under which tax bracket the brand belongs in order to finally determine the corresponding excise tax rate on a per pack basis. The assailed feature of this law pertains to the mechanism where, after a brand is classified based on its current net retail price, the classification is frozen and only Congress can thereafter reclassify the same. From a practical point of view, Annex "D" is merely a *by-product* of the whole mechanism and philosophy of the assailed law. That is, the brands under Annex "D" were also classified based on their current net retail price, the only difference being that they were the first ones so classified since they were the only brands surveyed as of October 1, 1996, or prior to the effectivity of RA 8240 on January 1, 1997.[37]

Due to this legislative classification scheme, it is *possible* that over time the net retail price of a previously classified brand, whether it be a brand under Annex "D" or a new brand classified after the effectivity of RA 8240 on January 1, 1997, *would increase* (due to inflation, increase of production costs, manufacturer's decision to increase its prices, *etc*.) *to a point that its net retail price pierces the tax bracket to which it was previously classified*.[38] Consequently, even if its present

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[35] If the net retail price (excluding the excise tax and the value-added tax) of a brand exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack.

[36] If the net retail price (excluding the excise tax and the value-added tax) of a brand is above Ten pesos (₱10.00) per pack.

[37] Upon the request of the Senate Committee on Ways and Means and prior to the effectivity of R.A. 8240 on January 1, 1997, the BIR conducted a survey on the average net retail prices of existing brands of cigarettes as of October 1, 1996 which is now embodied in Annex "D" and which became the basis for determining the applicable specific excise tax rates of said brands.

[38] The exception, of course, would be those brands classified under the premium-priced tax bracket (or the highest tax bracket). No matter how

day net retail price would make it fall under a higher tax bracket, the previously classified brand would continue to be subject to the excise tax rate under the lower tax bracket by virtue of the legislative classification freeze.

Petitioner claims that this is what happened in 2004 to the Marlboro and Philip Morris brands, which were permanently classified under Annex "D". As of October 1, 1996, Marlboro had net retail prices ranging from ₱6.78 to ₱6.84 while Philip Morris had net retail prices ranging from ₱7.39 to ₱7.48. Thus, pursuant to RA 8240,[39] Marlboro and Philip Morris were classified under the high-priced tax bracket and subjected to an excise tax rate of ₱8.96 per pack. Petitioner then presented evidence showing that after the lapse of about seven years or sometime in 2004, Marlboro's and Philip Morris' net retail prices per pack both increased to about ₱15.59.[40] This meant that they would fall under the premium-priced tax bracket, with a higher

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high their net retail price increases in the future, they would still remain in the premium-priced bracket. Further, the assumption is that the norm in the future is inflation. If it were deflation, than the older brands would possibly be the ones which would encounter a tax disadvantage after the lapse of some time.

[39] SEC. 145. Cigars and cigarettes. –

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(c) Cigarettes packed by machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below: x x x

(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight pesos and ninety-six centavos (₱8.96) per pack; x x x

[40] This was computed as follows: Net Retail Price (₱15.59) = Gross Retail Price (₱27.00)*- Value-Added Tax (₱2.45) – Excise Tax (₱8.96)

*The gross retail price was established through the receipt of purchase of Marlboro and Philip Morris from a grocery store. (Exhibit "B", records, vol. II, p. 407. See also TSN, February 20, 2004, records, vol. II, pp. 614-617)

excise tax rate of ₱13.44 per pack,[41] had they been classified based on their 2004 net retail prices. However, due to the legislative classification freeze, they continued to be classified under the high-priced tax bracket with a lower excise tax rate. Petitioner thereafter deplores the fact that its Lucky Strike Filter, Lucky Strike Lights, and Lucky Strike Menthol Lights cigarettes, introduced in the market sometime in 2001 and validated by a BIR survey in 2003, were found to have net retail prices of ₱11.53, ₱11.59 and ₱10.34,[42] respectively, which are lower than those of Marlboro and Philip Morris. However, since petitioner's cigarettes were newly introduced brands in the market, they were taxed based on their current net retail prices and, thus, fall under the premium-priced tax bracket with a higher excise tax rate of ₱13.44 per pack. This unequal tax treatment between Marlboro and Philip Morris, on the one hand, and Lucky Strike, on the other, is the crux of petitioner's contention that the legislative classification freeze violates the equal protection and uniformity of taxation clauses of the Constitution.

It is apparent that, contrary to its assertions, petitioner is not only questioning the undue favoritism accorded to brands under Annex "D", but the entire mechanism and philosophy of the law which freezes the tax classification of a cigarette brand based on its current net retail price. Stated differently, the alleged discrimination arising from the legislative classification freeze between the brands under Annex "D" and petitioner's newly introduced brands arose *only because* the former were classified

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[41] SEC. 145. Cigars and cigarettes. –

x x x x x x x x x

(c) Cigarettes packed by machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below: x x x

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Thirteen pesos and forty-four centavos (₱13.44) per pack;

[42] Annex "A", Revenue Regulations No. 22-2003.

based on their "current" net retail price as of October 1, 1996 *and* petitioner's newly introduced brands were classified based on their "current" net retail price as of 2003. Without this corresponding freezing of the classification of petitioner's newly introduced brands based on their current net retail price, it would be impossible to establish that a disparate tax treatment occurred between the Annex "D" brands and petitioner's newly introduced brands.

This clarification is significant because, under these circumstances, a declaration of unconstitutionality would necessarily entail nullifying the whole mechanism of the law and not just Annex "D.." Consequently, if the assailed law is declared unconstitutional on equal protection grounds, the entire method by which a brand of cigarette is classified would have to be invalidated. As a result, no method to classify brands under Annex "D" as well as new brands would be left behind and the whole Section 145 of the NIRC, as amended, would become inoperative.[43]

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[43] It may be argued that, perhaps, only the freezing mechanism of the law may be declared unconstitutional so that the current net retail price can still be used to determine the corresponding tax brackets of old and new brands. This becomes problematic since there is no guide as to when or how frequent the current net retail prices shall be determined *precisely because* the freezing mechanism assumes this function in the assailed law. This Court cannot fill this void that will be created in the law; otherwise, it would be tantamount to judicial legislation. In short, the freezing mechanism is an integral and indispensable part of the classification scheme devised by Congress, without which, it cannot function. Thus, the whole of Section 145(C) of the NIRC, as amended, becomes unavoidably inoperative should a declaration of unconstitutionality be decreed.

This result is in accordance with the ruling case law on the matter:

The general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other.

To simplify the succeeding discussions, we shall refer to the whole mechanism and philosophy of the assailed law which freezes the tax classification of a cigarette brand based on its current net retail price and which, thus, produced different classes of brands based on the time of their introduction in the market (starting with the brands in Annex "D" since they were the first brands so classified as of October 1, 1996) as the *classification freeze provision*.[44]

Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x

The exception to the general rule is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them. (Agpalo, *Statutory Construction*, 1986 ed., pp. 28-29)

[44] The practical effect of the operation of the *classification freeze provision* may be visualized as a timeline starting with brands in Annex "D" which were classified based on their net retail prices as of October 1, 1996. As new brands were introduced in the market, new classes of brands were likewise created depending on the time they were introduced and the time their classifications were finally fixed by the BIR pursuant to the relevant revenue regulations. The characterization of petitioner that the *classification freeze provision* merely created two classes of brands, *i.e.*, old brands under Annex "D" and new brands introduced after the effectivity of R.A. 8240 is thus, inaccurate.

In line with this observation, the succeeding discussions shall make use as point of comparison *older* brands *vis-à-vis newer* brands and *not* old brands (under Annex "D") *vis-à-vis* new brands. In concrete terms, the disparate tax treatment that appears to have taken place between brands in Annex "D" classified in 1996 and petitioner's new brands classified in 2003 may, under the same conditions (*i.e.*, piercing of the tax bracket by the older brand through increase of net retail price over time), occur between an older brand classified in 2004 (assuming that it is not classified under the highest tax bracket) and a newer brand that will be classified, say, in 2010.

As thus formulated, the central issue is whether or not the *classification freeze provision* violates the equal protection and uniformity of taxation clauses of the Constitution.

In *Sison, Jr. v. Ancheta*,[45] this Court, through Chief Justice Fernando, explained the applicable standard in deciding equal protection and uniformity of taxation challenges:

> Now for equal protection. The applicable standard to avoid the charge that there is a denial of this constitutional mandate whether the assailed act is in the exercise of the police power or the power of eminent domain is to demonstrate "that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looks upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest." That same formulation applies as well to taxation measures. The equal protection clause is, of course, inspired by the noble concept of approximating the ideal of the laws's (sic) benefits being available to all and the affairs of men being governed by that serene and impartial uniformity, which is of the very essence of the idea of law. There is, however, wisdom, as well as realism, in these words of Justice Frankfurter: "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." **Hence the constant reiteration of the view that classification if rational**

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[45] 215 Phil. 582 (1984).

in character is allowable. As a matter of fact, in a leading case of *Lutz v. Araneta*, this Court, through Justice J.B.L. Reyes, went so far as to hold "at any rate, it is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that 'inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation.'"

Petitioner likewise invoked the kindred concept of uniformity. According to the Constitution: "The rule of taxation shall be uniform and equitable." This requirement is met according to Justice Laurel in *Philippine Trust Company v. Yatco*, decided in 1940, when the tax "operates with the same force and effect in every place where the subject may be found." He likewise added: "The rule of uniformity does not call for perfect uniformity or perfect equality, because this is hardly attainable." The problem of classification did not present itself in that case. It did not arise until nine years later, when the Supreme Court held: "Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. **The taxing power has the authority to make reasonable and natural classifications for purposes of taxation,** . . . As clarified by Justice Tuason, where "the differentiation" complained of "conforms to the practical dictates of justice and equity" it "is not discriminatory within the meaning of this clause and is therefore uniform." There is quite a similarity then to the standard of equal protection for all that is required is that the tax "applies equally to all persons, firms and corporations placed in similar situation."[46] (Emphasis supplied)

In consonance thereto, we have held that "*in our jurisdiction*, the standard and analysis of equal protection challenges in the main have followed the *'rational basis' test*, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution."[47] Within the present context of tax legislation on sin products which

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[46] *Id.* at 589-590.

[47] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 370.

neither contains a suspect classification nor impinges on a fundamental right, the rational-basis test thus finds application. Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest.[48] The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation.[49] Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis.[50] The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.[51]

A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally to all those belonging to the same class.[52]

The first, third and fourth requisites are satisfied. The *classification freeze provision* was inserted in the law for reasons of practicality and expediency. That is, since a new brand was not yet in existence at the time of the passage of RA 8240, then Congress needed a uniform mechanism to fix

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[48] *Nordlinger v. Hahn*, 505 U.S. 1 (1992).

[49] *F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920).

[50] See *Basco v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323, 334-335 (1991).

[51] *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940).

[52] *Government Service Insurance System v. Montesclaros*, G.R. No. 146494, July 14, 2004, 434 SCRA 441, 451-452.

the tax bracket of a new brand. The current net retail price, similar to what was used to classify the brands under Annex "D" as of October 1, 1996, was thus the logical and practical choice. Further, with the amendments introduced by RA 9334, the freezing of the tax classifications now expressly applies not just to Annex "D" brands but to newer brands introduced after the effectivity of RA 8240 on January 1, 1997 and any new brand that will be introduced in the future.[53] (However, as will be discussed later, the intent to apply the freezing

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[53] The application of the freezing mechanism to newer brands is reflected in the following amendments introduced by R.A. No. 9334 to R.A. No. 8240, to wit:

Suggested net retail price shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified; **Provided however, That brands of cigarettes introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003**. **Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.**

x x x x x x x x x

The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D", **including the classification of brands for the same products which, although not set forth in said Annex "D", were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.** (Emphasis supplied)

mechanism to newer brands was already in place even prior to the amendments introduced by RA 9334 to RA 8240.) This does not explain, however, why the classification is "frozen" after its determination based on current net retail price and how this is germane to the purpose of the assailed law. An examination of the legislative history of RA 8240 provides interesting answers to this question.

RA 8240 was the first of three parts in the Comprehensive Tax Reform Package then being pushed by the Ramos Administration. It was enacted with the following objectives stated in the Sponsorship Speech of Senator Juan Ponce Enrile (Senator Enrile), *viz*:

> **First**, to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenue for the government.
>
> **Second**, to ensure that the tax burden is equitably distributed not only amongst the industries affected but equally amongst the various levels of our society that are involved in various markets that are going to be affected by the excise tax on distilled spirits, fermented liquor, cigars and cigarettes.
>
> In the case of firms engaged in the industries producing the products that we are about to tax, this means relating the tax burden to their market share, not only in terms of quantity, Mr. President, but in terms of value.
>
> In case of consumers, this will mean evolving a multi-tiered rate structure so that low-priced products are subject to lower tax rates and higher-priced products are subject to higher tax rates.
>
> **Third**, to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion.[54]

In the initial stages of the crafting of the assailed law, the Department of Finance (DOF) recommended to Congress a

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[54] II RECORD, SENATE 10TH CONGRESS (October 15, 1996).

shift from the then existing *ad valorem* taxation system to a specific taxation system with respect to sin products, including cigarettes. The DOF noted that the *ad valorem* taxation system was a source of massive tax leakages because the taxpayer was able to evade paying the correct amount of taxes through the undervaluation of the price of cigarettes using various marketing arms and dummy corporations. In order to address this problem, the DOF proposed a specific taxation system where the cigarettes would be taxed based on volume or on a per pack basis which was believed to be less susceptible to price manipulation. The reason was that the BIR would only need to monitor the sales volume of cigarettes, from which it could easily compute the corresponding tax liability of cigarette manufacturers. Thus, the DOF suggested the use of a three-tiered system which operates in substantially the same manner as the four-tiered system under RA 8240 as earlier discussed. The proposal of the DOF was embodied in House Bill (H.B.) No. 6060, the pertinent portions of which states—

SEC. 142. Cigars and cigarettes.—

(c) Cigarettes packed by machine.— There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the manufacturer's or importer's wholesale price (net of excise tax and value-added tax) per pack exceeds four pesos and twenty centavos (₱4.20), the tax shall be seven pesos and fifty centavos (₱7.50);

(2) If the manufacturer's or importer's wholesale price (net of excise tax and value-added tax) per pack exceeds three pesos and ninety centavos (₱3.90) but does not exceed four pesos and twenty centavos (₱4.20), the tax shall be five pesos and fifty centavos (₱5.50): *provided*, that after two (2) years from the effectivity of this Act, cigarettes otherwise subject to tax under this subparagraph shall be taxed under subparagraph (1) above.

(3) If the manufacturer's or importer's wholesale price (net of excise tax and value-added tax) per pack does not exceeds three pesos and ninety centavos (₱3.90), the tax rate shall be one peso (₱1.00).

Variants of existing brands and new brands of cigarettes packed by machine to be introduced in the domestic market after the effectivity of this Act, shall be taxed under paragraph (c)(1) hereof.

The rates of specific tax on cigars and cigarettes under paragraphs (a), (b), and (c) hereof, including the price levels for purposes of classifying cigarettes packed by machine, shall be revised upward two (2) years after the effectivity of this Act and every two years thereafter by the Commissioner of Internal Revenue, subject to the approval of the Secretary of Finance, taking into account the movement of the consumer price index for cigars and cigarettes as established by the National Statistics Office: *provided*, that the increase in taxes and/or price levels shall be equal to the present change in such consumer price index for the two-year period: *provided, further*, that the President, upon the recommendation of the Secretary of Finance, may suspend or defer the adjustment in price levels and tax rates when the interest of the national economy and general welfare so require, such as the need to obviate unemployment, and economic and social dislocation: *provided, finally*, that the revised price levels and tax rates authorized herein shall in all cases be rounded off to the nearest centavo and shall be in force and effect on the date of publication thereof in a newspaper of general circulation. x x x (Emphasis supplied)

What is of particular interest with respect to the proposal of the DOF is that it contained a provision for the periodic adjustment of the excise tax rates and tax brackets, and a corresponding periodic resurvey and reclassification of cigarette brands based on the increase in the consumer price index as determined by the Commissioner of Internal Revenue subject to certain guidelines. The evident intent was to prevent inflation from eroding the value of the excise taxes that would be collected from cigarettes over time by adjusting the tax rate and tax brackets based on the increase in the consumer price index. Further, under this proposal, old brands as well as new brands introduced thereafter would be subjected to a resurvey and reclassification based on their respective values at the end of every two years in order to align them with the adjustment of

the excise tax rate and tax brackets due to the movement in the consumer price index.[55]

Of course, we now know that the DOF proposal, insofar as the periodic adjustment of tax rates and tax brackets, and the periodic resurvey and reclassification of cigarette brands are concerned, did not gain approval from Congress. The House and Senate pushed through with their own versions of the excise tax system on beers and cigarettes both denominated as H.B. No. 7198. For convenience, we shall refer to the bill deliberated upon by the House as the House Version and that of the Senate as the Senate Version.

The House's Committee on Ways and Means, then chaired by Congressman Exequiel B. Javier (Congressman Javier), roundly rejected the DOF proposal. Instead, in its Committee Report submitted to the plenary, it proposed a different excise tax system which used a specific tax as a basic tax with an *ad valorem* comparator. Further, it deleted the proposal to have a periodic adjustment of tax rates and the tax brackets as well as periodic resurvey and reclassification of cigarette brands, to wit:

> The rigidity of the specific tax system calls for the need for frequent congressional intervention to adjust the tax rates to inflation and to keep pace with the expanding needs of government for more revenues. The DOF admits this flaw inherent in the tax system it proposed.

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[55] It may be noted that after six (6) years from the passage of R.A. No. 8240 or in 2003, several bills were filed in Congress seeking to amend the *classification freeze provision* by shifting to a periodic adjustment of tax rate and tax brackets as well as periodic resurvey and reclassification of old and new brands to be conducted by the BIR. This was intended to address the perceived unfair differential tax treatment between old and new brands that occurs over the lapse of time. Petitioner views these bills as the remedy to solve the alleged unfair tax treatment arising from the *classification freeze provision* (See petitioner's petition before the trial court, records, vol. I, p. 21) Interestingly, these bills filed in 2003 are substantially the same as the above discussed DOF proposal which was rejected by Congress in enacting R.A. No. 8240 for reasons that will be discussed in what follows.

Hence, to obviate the need for remedial legislation, the DOF is asking Congress to grant to the Commissioner the power to revise, one, the specific tax rates: and two, the price levels of beer and cigarettes. What the DOF is asking, Mr. Speaker, is for Congress to delegate to the Commissioner of Internal Revenue the power to fix the tax rates and classify the subjects of taxation based on their price levels for purposes of fixing the tax rates. While we sympathize with the predicament of the DOF, it is not for Congress to abdicate such power. The power sought to be delegated to be exercised by the Commissioner of Internal Revenue is a legislative power vested by the Constitution in Congress pursuant to Section 1, Article VI of the Constitution. Where the power is vested, there it must remain— in Congress, a body of representatives elected by the people. Congress may not delegate such power, much less abdicate it.

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Moreover, the grant of such power, if at all constitutionally permissible, to the Commissioner of Internal Revenue is fraught with ethical implications. The debates on how much revenue will be raised, how much money will be taken from the pockets of taxpayers, will inexorably shift from the democratic Halls of Congress to the secret and non-transparent corridors of unelected agencies of government, the Department of Finance and the Bureau of Internal Revenue, which are not accountable to our people. We cannot countenance the shift for ethical reasons, lest we be accused of betraying the trust reposed on this Chamber by the people. x x x

A final point on this proposal, Mr. Speaker, is the exercise of the taxing power of the Commissioner of Internal Revenue which will be triggered by inflation rates based on the consumer price index. Simply stated, Mr. Speaker, the specific tax rates will be fixed by the Commissioner depending on the price levels of beers and cigarettes as determined by the consumers' price index. This is a novel idea, if not necessarily weird in the field of taxation. What if the brewer or the cigarette manufacturer sells at a price below the consumers' price index? Will it be taxed on the basis of the consumer's price index which is over and above its wholesale or retail price as the case may be? This is a weird form of exaction where the tax is based not on what the brewer or manufacturer actually realized but on an imaginary wholesale or retail price. This amounts to a taxation based on presumptive price levels and renders the specific tax a presumptive

tax. We hope, the DOF and the BIR will also honor a presumptive tax payment.

Moreover, specific tax rates based on price levels tied to consumer's price index as proposed by the DOF engenders anti-trust concerns. The proposal if enacted into law will serve as a barrier to the entry of new players in the beer and cigarette industries which are presently dominated by shared monopolies. A new player in these industries will be denied business flexibility to fix its price levels to promote its product and penetrate the market as the price levels are dictated by the consumer price index. The proposed tax regime, Mr. Speaker, will merely enhance the stranglehold of the oligopolies in the beer and cigarette industries, thus, reversing the government's policy of dismantling monopolies and combinations in restraint of trade.[56]

For its part, the Senate's Committee on Ways and Means, then chaired by Senator Juan Ponce Enrile (Senator Enrile), developed its own version of the excise tax system on cigarettes. The Senate Version consisted of a four-tiered system and, interestingly enough, contained a periodic excise tax rate and tax bracket adjustment as well as a periodic resurvey and reclassification of brands provision ("periodic adjustment and reclassification provision," for brevity) to be conducted by the DOF in coordination with the BIR and the National Statistics Office based on the increase in the consumer price index—similar to the one proposed by the DOF, *viz*:

SEC. 4 Section 142 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 142. Cigars and cigarettes. –

x x x x x x x x x

(c) Cigarettes packed by machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

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[56] RECORD, HOUSE 10TH CONGRESS (March 11, 1996).

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve pesos (₱12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Eight pesos (₱8.00) per pack;

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) up to Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack.

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of this Act shall be taxed under the highest classification of any variant of that brand.

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The rates of specific tax on cigars and cigarettes under subparagraph (a), (b) and (c) hereof, including the net retail prices for purposes of classification, shall be adjusted on the sixth of January three years after the effectivity of this Act and every three years thereafter. The adjustment shall be in accordance with the inflation rate measured by the average increase in the consumer price index over the three-year period. The adjusted tax rates and net price levels shall be in force on the eighth of January.

Within the period hereinabove mentioned, the Secretary of Finance shall direct the conduct of a survey of retail prices of each brand of cigarettes in coordination with the Bureau of Internal Revenue and the National Statistics Office.

For purposes of this Section, net retail price shall mean the price at which the cigarette is sold on retail in 20 major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the net retail price shall mean the price at which the cigarette is sold

in five major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes in the initial year of implementation of this Act shall be based on its average net retail price as of October 1, 1996. The said classification by brand shall remain in force until January 7, 2000.

New brands shall be classified according to their current net retail price.[57] (Emphasis supplied)

During the period of interpellations, the late Senator Raul S. Roco (Senator Roco) expressed doubts as to the legality and wisdom of putting a periodic adjustment and reclassification provision:

Senator Enrile: This will be the first time that a tax burden will be allowed to be automatically adjusted upwards based on a system of indexing tied up with the Consumers Price Index (CPI). Although I must add that we have adopted a similar system in adjusting the personal tax exemption from income tax of our individual taxpayers.

Senator Roco: They are not exactly the same, Mr. President. But even then, we do note that this the first time we are trying to put an automatic adjustment. My concern is, why do we propose now this automatic adjustment? What is the reason that impels the committee? Maybe we can be enlightened and maybe we shall embrace it forthwith. But what is the reason?

Senator Enrile: Mr. President, we will recall that in the House of Representatives, it has adopted a tax proposal on these products based on a specific tax as a basic tax with an *ad valorem* comparator.

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[57] Senator Enrile explained how this periodic adjustment and reclassification provision would operate, thusly:

Since 1996 is the year during which we are adopting this law— and it will take effect January of next year— the two-year period covered will be 1997 and 1998. So in order to find out the rate of adjustment both of the cutoff point price (tax bracket), retail price and the corresponding specific tax rate, we divide the CPI of 1998 by the CPI of 1996 and then we get a factor or a quotient which is 1.1272. The figure "one(1)" before the decimal point represents the CPI of 1996 and the numbers after the decimal point would represent the rate of increase.

The Committee on Ways and Means of the Senate has not seen it fit to adopt this system, but it recognized the possibility that there may be an occasion where the price movement in the country might unwarrantedly move upwards, in which case, if we peg the government to a specific tax rate of ₱6.30, ₱9.30 and ₱12.30 for beer, since we are talking of beer,[58] the government might lose in the process.

In order to consider the interest of the government in this, Mr. President, and in order to obviate the possibility that some of these products categorized under the different tiers with different specific tax rates from moving upwards and piercing their own tiers and thereby expose themselves to an incremental tax of higher magnitude, it was felt that we should adopt a system where, in spite of any escalation in the price of these products in the future, the tax rates could be adjusted upwards so that none of these products would leave their own tier. That was the basic principle under which we crafted this portion of the tax proposal.

Senator Roco: Mr. President, we certainly share the judgment of the distinguished gentleman as regards the comparator provision in the House of Representatives and we appreciate the reasons given. But we are under the impression that the House also, aside from the comparator, has an adjustment clause that is fixed. It has fixed rates for the adjustment. So that one of the basic differences between the Senate proposed version now and the House version is that, the House of Representatives has manifested its will and judgment as regards the tax to which we will adjust, whereas the Senate version

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So, in effect, what I am saying is, if we take 100% out of 1.1272 which is the quotient of dividing 257, the CPI of 1998 by 228, the CPI of 1996, then, we end up with .1272 or 12%, a little less than 13%.

If we multiply the net retail price now, which is the cut off point (of the tax brackets) established by law as of the time we enact this law, by approximately 13%, that will be the cutoff point price, and we increase the net retail price used as a base when we adopted this law by 13%. It increases the corresponding specific tax by 13% and this will be the adjusted cutoff point and adjusted specific tax as of 1999.

[58] The discussion is in reference to the periodic adjustment and reclassification provision of *beer*. However, under the Senate Version, the same periodic adjustment and reclassification provision is applied to cigarettes so that the same reasoning is applicable to cigarettes.

relegates fundamentally that judgment to the Department of Finance.

Senator Enrile: That is correct, Mr. President, because we felt that in imposing a fixed adjustment, we might be fixing an amount that is either too high or too low. We cannot foresee the economic trends in this country over a period of two years, three years, let alone ten years. So we felt that a mechanism ought to be adopted in order to serve the interest of the government, the interest of the producers, and the interest of the consuming public.

Senator Roco: This is where, Mr. President, my policy difficulties start. Under the Constitution— I think it is Article VI, Section 24, and it was the distinguished chairman of the Committee on Ways and Means who made this Chamber very conscious of this provision— revenue measures and tariff measures shall originate exclusively from the House of Representatives.

The reason for this, Mr. President, is, there is a long history why the House of Representatives must originate judgments on tax. The House members represent specific districts. They represent specific constituencies, and the whole history of parliamentarism, the whole history of Congress as an institution is founded on the proposition that the direct representatives of the people must speak about taxes.

Mr. President, while the Senate can concur and can introduce amendments, the proposed change here is radical. This is the policy difficulty that I wish to clarify with the gentleman because the judgment call now on the amount of tax to be imposed is not coming from Congress. It is shifted to the Department of Finance. True, the Secretary of Finance may have been the best finance officer two years ago and now the best finance officer in Asia, but that does not make him qualified to replace the judgment call of the House of Representatives. That is my first difficulty.

Senator Enrile: Mr. President, precisely the law, in effect, authorizes this rate beforehand. The computation of the rate is the only thing that was left to the Department of Finance as a tax implementor of Congress. This is not unusual because we have already, as I said, adopted a system similar to this. If we adjust the personal exemption of an individual taxpayer, we are in effect adjusting the applicable tax rate to him.

Senator Roco: But the point I was trying to demonstrate, Mr.

President, is that we depart precisely from the mandate of the Constitution that judgment on revenue must emanate from Congress. Here, it is shifted to the Department of Finance for no visible or patent reason insofar as I could understand. The only difference is, who will make the judgment? Should it be Congress?

Senator Enrile: Mr. President, forgive me for answering sooner than I should. My understanding of the Constitution is that all revenue measures must emanate from the House. That is all the Constitution says.

Now, it does not say that the judgment call must belong to the House. The judgment call can belong both to the House and to the Senate. We can change whatever proposal the House did. Precisely, we are now crafting a measure, and we are saying that this is the rate subject to an adjustment which we also provide. We are not giving any unusual power to the Secretary of Finance because we tell him, "This is the formula that you must adopt in arriving at the adjustment so that you do not have to come back to us."[59]

Apart from his doubts as to the legality of the delegation of taxing power to the DOF and BIR, Senator Roco also voiced out his concern about the possible abuse and corruption that will arise from the periodic adjustment and reclassification provision. Continuing—

Senator Roco: Mr. President, if that is the argument, that the distinguished gentleman has a different legal interpretation, we will then now examine the choice. Because his legal interpretation is different from mine, then the issues becomes: **Is it more advantageous that this judgment be exercised by the House? Should we not concur or modify in terms of the exercise by the House of its power or are we better off giving this judgment call to the Department of Finance?**

Let me now submit, Mr. President, that in so doing, it is more advantageous to fix the rate so that even if we modify the rates identified by Congress, it is better and less susceptible to abuse.

For instance, Mr. President, would the gentlemen wish to demonstrate to us how this will be done? On page 8, lines 5 to 9,

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[59] II RECORD, SENATE 10TH CONGRESS (November 4, 1996).

there is a provision here as to when the Secretary of Finance shall direct the conduct of survey of retail prices of each brand of fermented liquor in coordination with the Bureau of Internal Revenue and the National Statistics Office.

These offices are not exactly noted, Mr. President, for having been sanctified by the Holy Spirit in their noble intentions. x x x [60] (Emphasis supplied)

Pressing this point, Senator Roco continued his query:

Senator Roco: x x x [On page 8, lines 5 to 9] it says that during the two-year period, the Secretary of Finance shall direct the conduct of the survey. How? When? Which retail prices and what brand shall he consider? When he coordinates with the Bureau of Internal Revenue, what is the Bureau of Internal Revenue supposed to be doing? What is the National Statistics Office supposed to be doing, and under what guides and standards?

May the gentleman wish to demonstrate how this will be done? **My point, Mr. President, is, by giving the Secretary of Finance, the BIR and the National Statistics Office discretion over a two-year period will invite corruption and arbitrariness, which is more dangerous than letting the House of Representatives and this Chamber set the adjustment rate.** Why not set the adjustment rate? Why should Congress not exercise that judgment now? x x x

Senator Enrile: x x x

Senator Roco: x x x We respectfully submit that the Chairman consider choosing the judgment of this Chamber and the House of Representatives over a delegated judgment of the Department of Finance.

Again, it is not to say that I do not trust the Department of Finance. It has won awards, and I also trust the undersecretary. But that is beside the point. Tomorrow, they may not be there.[61] (Emphasis supplied)

This point was further dissected by the two senators. There was a genuine difference of opinion as to which system— one

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[60] *Id.*

[61] *Id.*

with a fixed excise tax rate and classification or the other with a periodic adjustment of excise tax rate and reclassification—was less susceptible to abuse, as the following exchanges show:

> Senator Enrile: Mr. President, considering the sensitivity of these products from the viewpoint of exerted pressures because of the understandable impact of this measure on the pockets of the major players producing these products, the committee felt that perhaps to lessen such pressures, it is best that we now establish a norm where the tax will be adjusted without incurring too much political controversy as has happened in the case of this proposal.
>
> Senator Roco: But that is exactly the same reason we say we must rely upon Congress because Congress, if it is subjected to pressure, at least balances off because of political factors.
>
> When the Secretary of Finance is now subjected to pressure, are we saying that the Secretary of Finance and the Department of Finance is better-suited to withstand the pressure? Or are we saying "Let the Finance Secretary decide whom to yield"?
>
> I am saying that the temptation and the pressure on the Secretary of Finance is more dangerous and more corruption-friendly than ascertaining for ourselves now a fixed rate of increase for a fixed period.
>
> Senator Enrile: Mr. President, perhaps the gentleman may not agree with this representation, but in my humble opinion, this formulation is less susceptible to pressure because there is a definite point of reference which is the consumer price index, and that consumer price index is not going to be used only for this purpose. The CPI is used for a national purpose, and there is less possibility of tinkering with it.[62]

Further, Senator Roco, like Congressman Javier, expressed the view that the periodic adjustment and reclassification provision would create an anti-competitive atmosphere. Again, Senators Roco and Enrile had genuine divergence of opinions on this matter, to wit:

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[62] *Id.*

Senator Roco: x x x On the marketing level, an adjustment clause may, in fact, be disadvantageous to both companies, whether it is the Lucio Tan companies or the San Miguel companies. If we have to adjust our marketing position every two years based on the adjustment clause, the established company may survive, but the new ones will have tremendous difficulty. Therefore, this provision tends to indicate an anticompetitive bias.

It is good for San Miguel and the Lucio Tan companies, but the new companies— assuming there may be new companies and we want to encourage them because of the old point of liberalization— will be at a disadvantage under this situation. If this observation will find receptivity in the policy consideration of the distinguished Gentleman, maybe we can also further, later on, seek amendments to this automatic adjustment clause in some manner.

Senator Enrile: Mr. President, I cannot foresee any anti-competitiveness of this provision with respect to a new entrant, because a new entrant will not just come in without studying the market. He is a lousy businessman if he will just come in without studying the market. If he comes in, he will determine at what retail price level he will market his product, and he will be coming under any of the tiers depending upon his net retail price. Therefore, I do not see how this particular provision will affect a new entrant.

Senator Roco: Be that as it may, Mr. President, we obviously will not resort to debate until this evening, and we will have to look for other ways of resolving the policy options.

Let me just close that particular area of my interpellation, by summarizing the points we were hoping could be clarified.

1. That the automatic adjustment clause is at best questionable in law.

2. It is corruption-friendly in the sense that it shifts the discretion from the House of Representatives and this Chamber to the Secretary of Finance, no matter how saintly he may be.

3. There is,— although the judgment call of the gentleman disagrees— to our view, an anticompetitive situation that is geared at…[63]

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[63] *Id.*

After these lengthy exchanges, it appears that the views of Senator Enrile were sustained by the Senate Body because the Senate Version was passed on Third Reading without substantially altering the periodic adjustment and reclassification provision.

It was actually at the Bicameral Conference Committee level where the Senate Version underwent major changes. The Senate Panel prevailed upon the House Panel to abandon the basic excise tax rate and *ad valorem* comparator as the means to determine the applicable excise tax rate. Thus, the Senate's four-tiered system was retained with minor adjustments as to the excise tax rate per tier. However, the House Panel prevailed upon the Senate Panel to delete the power of the DOF and BIR to periodically adjust the excise tax rate and tax brackets, and periodically resurvey and reclassify the cigarette brands based on the increase in the consumer price index.

In lieu thereof, the classification of existing brands based on their average net retail price as of October 1, 1996 was "frozen" and a fixed across-the-board 12% increase in the excise tax rate of each tier after three years from the effectivity of the Act was put in place. There is a dearth of discussion in the deliberations as to the applicability of the freezing mechanism to new brands after their classification is determined based on their current net retail price. But a plain reading of the text of RA 8240, even before its amendment by RA 9334, as well as the previously discussed deliberations would readily lead to the conclusion that the intent of Congress was to likewise apply the freezing mechanism to new brands. Precisely, Congress rejected the proposal to allow the DOF and BIR to periodically adjust the excise tax rate and tax brackets as well as to periodically resurvey and reclassify cigarettes brands which would have encompassed old *and* new brands alike. Thus, it would be absurd for us to conclude that Congress intended to allow the periodic reclassification of new brands by the BIR after their classification is determined based on their current net retail price. We shall return to this point when we tackle the second issue.

In explaining the changes made at the Bicameral Conference Committee level, Senator Enrile, in his report to the Senate plenary, noted that the fixing of the excise tax rates was done to avoid confusion.[64] Congressman Javier, for his part, reported to the House plenary the reasons for fixing the excise tax rate and freezing the classification, thus:

> Finally, this twin feature, Mr. Speaker, fixed specific tax rates and frozen classification, rejects the Senate version which seeks to abdicate the power of Congress to tax by pegging the rates as well as the classification of sin products to consumer price index **which practically vests in the Secretary of Finance the power to fix the rates and to classify the products for tax purposes.**[65] (Emphasis supplied)

Congressman Javier later added that the frozen classification was intended to give stability to the industry as the BIR would be prevented from tinkering with the classification since it would remain unchanged despite the increase in the net retail prices of the previously classified brands.[66] This would also assure the industry players that there would be no new impositions as long as the law is unchanged.[67]

From the foregoing, it is quite evident that the *classification freeze provision* could hardly be considered arbitrary, or motivated by a hostile or oppressive attitude to unduly favor older brands over newer brands. Congress was unequivocal in its unwillingness to delegate the power to periodically adjust the excise tax rate and tax brackets as well as to periodically resurvey and reclassify the cigarette brands based on the increase in the consumer price index to the DOF and the BIR. Congress doubted the constitutionality of such delegation of power, and likewise, considered the ethical implications thereof. Curiously, the *classification freeze provision* was put in place of the periodic adjustment and reclassification

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[64] II RECORD, SENATE 10TH CONGRESS (November 21, 1996).

[65] RECORD, HOUSE 10TH CONGRESS (November 21, 1996).

[66] *Id.*

[67] *Id.*

provision because of the belief that the latter would foster an anti-competitive atmosphere in the market. Yet, as it is, this same criticism is being foisted by petitioner upon the *classification freeze provision*.

To our mind, the *classification freeze provision* was in the main the result of Congress' earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other state interests. In particular, the questioned provision addressed Congress' administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas for abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.

To elaborate a little, Congress could have reasonably foreseen that, under the DOF proposal and the Senate Version, the periodic reclassification of brands would tempt the cigarette manufacturers to manipulate their price levels or bribe the tax implementers in order to allow their brands to be classified at a lower tax bracket even if their net retail prices have already migrated to a higher tax bracket after the adjustment of the tax brackets to the increase in the consumer price index. Presumably, this could be done when a resurvey and reclassification is forthcoming. As briefly touched upon in the Congressional deliberations, the difference of the excise tax rate between the medium-priced and the high-priced tax brackets under RA 8240, prior to its amendment, was ₱3.36. For a moderately popular brand which sells around 100 million packs per year, this easily translates to ₱336,000,000.[68] The incentive for tax avoidance, if not outright tax evasion, would clearly be present. Then again, the tax implementers may use the power to periodically adjust the tax rate and reclassify

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[68] To give a better perspective of the cigarette market based on volume, in 2003 alone, sales volume was as follows: 2.1 billion packs under the low-priced segment, 898 million packs under the medium-priced segment, 1.3 billion packs under the high-priced segment. [RECORD, SENATE 13TH CONGRESS (November 17, 2004)]

the brands as a tool to unduly oppress the taxpayer in order for the government to achieve its revenue targets for a given year.

Thus, Congress sought to, among others, simplify the whole tax system for sin products to remove these potential areas of abuse and corruption from both the side of the taxpayer and the government. Without doubt, the *classification freeze provision* was an integral part of this overall plan. This is in line with one of the avowed objectives of the assailed law "to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion."[69] RA 9334 did not alter this *classification freeze provision* of RA 8240. On the contrary, Congress affirmed this freezing mechanism by clarifying the wording of the law. We can thus reasonably conclude, as the deliberations on RA 9334 readily show, that the administrative concerns in tax administration, which moved Congress to enact the *classification freeze provision* in RA 8240, were merely continued by RA 9334. Indeed, administrative concerns may provide a legitimate, rational basis for legislative classification.[70] In the case at bar, these administrative concerns in the measurement and collection of excise taxes on sin products are readily apparent as afore-discussed.

Aside from the major concern regarding the elimination of potential areas for abuse and corruption from the tax administration of sin products, the legislative deliberations also show that the *classification freeze provision* was intended to generate buoyant and stable revenues for government. With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree

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[69] *Supra* note 47.

[70] AMJUR STATELOCL § 122 citing *Chicago Freight Car Leasing Co. v. Limbach*, 62 Ohio St. 3d 489, 584 N.E.2d 690 (1992); *Sandy Springs Water Co. v. Department of Health and Environmental Control*, 324 S.C. 177, 478 S.E.2d 60 (1996). See also *Skyscraper Corporation v. County of Newberry*, 323 S.C. 412, 475 S.E.2d 764 (1996).

of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail prices in the future and, as a result, the amount of taxes due from them would remain predictable. The *classification freeze provision* would, thus, aid in the revenue planning of the government.[71]

All in all, the *classification freeze provision* addressed Congress' administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. *Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied.*

Going now to the contention of petitioner that the *classification freeze provision* unduly favors older brands over newer brands, we must first contextualize the basis of this claim. As previously discussed, the evidence presented by the petitioner merely showed that in 2004, Marlboro and Philip Morris, on the one hand, and Lucky Strike, on the other, would have been taxed at the same rate had the *classification freeze provision* been not in place. But due to the operation of the *classification freeze provision*, Lucky Strike was taxed higher. From here, petitioner generalizes that this differential tax treatment arising from the *classification freeze provision* adversely impacts the fairness of the playing field in the industry, particularly, between older and newer brands. Thus, it is virtually impossible for new brands to enter the market.

Petitioner did not, however, clearly demonstrate the exact extent of such impact. It has not been shown that the net retail prices of other older brands previously classified under this

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[71] II RECORD, SENATE 10TH CONGRESS (October 15, 1996).

classification system have already pierced their tax brackets, and, if so, how this has affected the overall competition in the market. Further, it does not necessarily follow that newer brands cannot compete against older brands because price is not the only factor in the market as there are other factors like consumer preference, brand loyalty, *etc*. In other words, even if the newer brands are priced higher due to the differential tax treatment, it does not mean that they cannot compete in the market especially since cigarettes contain addictive ingredients so that a consumer may be willing to pay a higher price for a particular brand solely due to its unique formulation. It may also be noted that in 2003, the BIR surveyed 29 new brands[72] that were introduced in the market after the effectivity of RA 8240 on January 1, 1997, thus negating the sweeping generalization of petitioner that the *classification freeze provision* has become an insurmountable barrier to the entry of new brands. Verily, where there is a claim of breach of the due process and equal protection clauses, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.[73]

Be that as it may, petitioner's evidence does suggest that, at least in 2004, Philip Morris and Marlboro, older brands, would have been taxed at the same rate as Lucky Strike, a newer brand, due to certain conditions (*i.e.*, the increase of the older brands' net retail prices beyond the tax bracket to which they were previously classified after the lapse of some time) were it not for the *classification freeze provision*. It may be conceded that this has adversely affected, to a certain extent, the ability of petitioner to competitively price its newer brands *vis-à-vis* the subject older brands. Thus, to a limited extent, the assailed law seems to derogate one of its avowed objectives, *i.e.* promoting fair competition among the players in the industry. Yet, will this occurrence, by itself, render the assailed law unconstitutional

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[72] See Annex "A", Revenue Regulations No. 22-2003.

[73] *Supra* note 40 at 588-589.

on equal protection grounds?

We answer in the negative.

Whether Congress acted improvidently in derogating, to a limited extent, the state's interest in promoting fair competition among the players in the industry, while pursuing other state interests regarding the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues through the *classification freeze provision*, and whether the questioned provision is the best means to achieve these state interests, necessarily go into the wisdom of the assailed law which we cannot inquire into, much less overrule. The *classification freeze provision* has not been shown to be precipitated by a veiled attempt, or hostile attitude on the part of Congress to unduly favor older brands over newer brands. On the contrary, we must reasonably assume, owing to the respect due a co-equal branch of government and as revealed by the Congressional deliberations, that the enactment of the questioned provision was impelled by an earnest desire to improve the efficiency and effectivity of the tax administration of sin products. For as long as the legislative classification is rationally related to furthering some legitimate state interest, as here, the rational-basis test is satisfied and the constitutional challenge is perfunctorily defeated.

We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government

and of the people themselves as the repository of all state power.[74] Thus, the legislative classification under the *classification freeze provision*, after having been shown to be rationally related to achieve certain legitimate state interests and done in good faith, must, perforce, end our inquiry.

Concededly, the finding that the assailed law seems to derogate, to a limited extent, one of its avowed objectives (*i.e.* promoting fair competition among the players in the industry) would suggest that, by Congress' own standards, the current excise tax system on sin products is imperfect. But, certainly, we cannot declare a statute unconstitutional merely because it can be improved or that it does not tend to achieve all of its stated objectives.[75] This is especially true for tax legislation which simultaneously addresses and impacts multiple state interests.[76] Absent a clear showing of breach of constitutional limitations, Congress, owing to its vast experience and expertise in the field of taxation, must be given sufficient leeway to formulate and experiment with different tax systems to address the complex issues and problems related to tax administration. Whatever imperfections that may occur, the same should be addressed to the democratic process to refine and evolve a taxation system which ideally will achieve most, if not all, of the state's objectives.

In fine, petitioner may have valid reasons to disagree with the policy decision of Congress and the method by which the latter sought to achieve the same. But its remedy is with Congress and not this Court. As succinctly articulated in *Vance v. Bradley*:[77]

The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the

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[74] *Valmonte v. Belmonte, Jr.*, G.R. No. 74930, February 13, 1989, 170 SCRA 256, 268.

[75] Cf. *Roschen v. Ward*, 279 U.S. 337, 339 (1929).

[76] It may be observed that tax legislation is not solely a revenue-generating measure as it also functions as a regulatory tool, a policy instrument to affect consumer behavior (*e.g.*, sumptuary effect), *etc*..

[77] 440 U.S. 93 (1979).

democratic process, and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.[78]

We now tackle the second issue.

Petitioner asserts that Revenue Regulations No. 1-97, as amended by Revenue Regulations No. 9-2003, Revenue Regulations No. 22-2003 and Revenue Memorandum Order No. 6-2003, are invalid insofar as they empower the BIR to reclassify or update the classification of new brands of cigarettes based on their current net retail prices every two years or earlier. It claims that RA 8240, even prior to its amendment by RA 9334, did not authorize the BIR to conduct said periodic resurvey and reclassification.

The questioned provisions are found in the following sections of the assailed issuances:

(1) Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, *viz*:

For the purpose of establishing or updating the tax classification of new brands and variant(s) thereof, their current net retail price shall be reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner. However, notwithstanding any increase in the current net retail price, the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations.

(2) Sections II(1)(b), II(4)(b), II(6), II(7), III (*Large Tax Payers Assistance Division II)* II(b) of Revenue Memorandum Order No. 6-2003, insofar as pertinent to

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[78] *Id.* at 97.

cigarettes packed by machine, *viz*:

II. POLICIES AND GUIDELINES

1. The conduct of survey covered by this Order, for purposes of determining the current retail prices of new brands of cigarettes and alcohol products introduced in the market on or after January 1, 1997, shall be undertaken in the following instances:

x x x x x x x x x

b. For reclassification of new brands of said excisable products that were introduced in the market after January 1, 1997.

x x x x x x x x x

4. The determination of the current retail prices of new brands of the aforesaid excisable products shall be initiated as follows:

x x x x x x x x x

b. After the lapse of the prescribed two-year period or as the Commissioner may otherwise direct, the appropriate tax reclassification of these brands based on the current net retail prices thereof shall be determined by a survey to be conducted upon a written directive by the Commissioner.

For this purpose, a memorandum order to the Assistant Commissioner, Large Taxpayers Service, Heads, Excise Tax Areas, and Regional Directors of all Revenue Regions, except Revenue Region Nos. 4, 5, 6, 7, 8 and 9, shall be issued by the Commissioner for the submission of the list of major supermarkets/retail outlets where the above excisable products are being sold, as well as the list of selected revenue officers who shall be designated to conduct the said activity(ies).

x x x x x x x x x

6. The results of the survey conducted in Revenue Region Nos. 4 to 9 shall be submitted directly to the Chief, LT Assistance Division II (LTAD II), National Office for consolidation. On the other hand, the results of the survey conducted in Revenue Regions other than Revenue Region Nos. 4 to 9, shall be submitted to the Office of the Regional Director for regional consolidation. The consolidated regional survey, together with the accomplished survey forms shall be

transmitted to the Chief, LTAD II for national consolidation within three (3) days from date of actual receipt from the survey teams. The LTAD II shall be responsible for the evaluation and analysis of the submitted survey forms and the preparation of the recommendation for the updating/revision of the tax classification of each brand of cigarettes and alcohol products. The said recommendation, duly validated by the ACIR, LTS, shall be submitted to the Commissioner for final review within ten (10) days from the date of actual receipt of complete reports from all the surveying Offices.

7. Upon final review by the Commissioner of the revised tax classification of the different new brands of cigarettes and alcohol products, the appropriate revenue regulations shall be prepared and submitted for approval by the Secretary of Finance.

x x x x x x x x x

III. PROCEDURES

x x x x x x x x x

Large Taxpayers Assistance Division II

x x x x x x x x x

1. Perform the following preparatory procedures on the identification of brands to be surveyed, supermarkets/retail outlets where the survey shall be conducted, and the personnel selected to conduct the survey.

x x x x x x x x x

b. On the tax reclassification of new brands

i. Submit a master list of registered brands covered by the survey pursuant to the provisions of Item II.2 of this Order containing the complete description of each brand, existing net retail price and the corresponding tax rate thereof.

ii. Submit to the ACIR, LTS, a list of major supermarkets/retail outlets within the territorial jurisdiction of the concerned revenue regions where the survey will be conducted to be used as basis in the issuance of Mission Orders. Ensure that the minimum number of establishments to be surveyed, as prescribed under existing revenue laws and regulations, is complied with. In addition, the names and designations of revenue officers selected to conduct the survey shall

be clearly indicated opposite the names of the establishments to be surveyed.

There is merit to the contention.

In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December 13, 1996, which mandates a one-time classification only.[79] Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications. However, the BIR made a turnaround by issuing

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[79] Section 4(B) of Revenue Regulations No. 1-97 provides:

Section 4. *Classification and Manner of Taxation of Existing Brands, New Brands and Variant of Existing Brands.*

x x x

B. *New Brand*

New brands shall be classified according to their current net retail price. In the meantime that the current net retail price has not yet been established, the suggested net retail price shall be used to determine the specific tax classification. Thereafter, a survey shall be conducted in 20 major supermarkets or retail outlets in Metro Manila (for brands of cigarette marketed nationally) or in five (5) major supermarkets or retail outlets in the region (for brands which are marketed only outside Metro Manila) at which the cigarette is sold on retail in reams/carton, three (3) months after the initial removal of the new brand to determine the actual net retail price excluding the excise tax and value added tax which shall then be the basis in determining the specific tax classification. In case the current net retail price is higher than the suggested net retail price, the former shall prevail. Otherwise, the suggested net retail price shall prevail. Any difference in the specific tax due shall be assessed and collected inclusive of increments as provided for by the National Internal Revenue Code, as amended.

The survey contemplated herein to establish the current net retail price on locally manufactured and imported cigarettes shall be conducted by the duly authorized representatives of the Commissioner of Internal Revenue together with a representative of the Regional Director from each Regional Office having jurisdiction over the retail outlet within the Region being surveyed, and who shall submit, without delay, their consolidated written report to the Commissioner of Internal Revenue.

Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations No. 1-97, by authorizing the BIR to periodically reclassify new brands (*i.e.*, every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240.

It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former.

More importantly, as previously discussed, the clear legislative intent was for new brands to benefit from the same freezing mechanism accorded to Annex "D" brands. To reiterate, in enacting RA 8240, Congress categorically rejected the DOF proposal and Senate Version which would have empowered the DOF and BIR to periodically adjust the excise tax rate and tax brackets, and to periodically resurvey and reclassify cigarette brands. (This resurvey and reclassification would have naturally encompassed both old and new brands.) It would thus, be absurd for us to conclude that Congress intended to allow the periodic reclassification of new brands by the BIR after their classification is determined based on their current net retail price while limiting the freezing of the classification to Annex "D" brands. Incidentally, Senator Ralph G. Recto expressed the following views during the deliberations on RA 9334, which later amended RA 8240:

Senator Recto: Because, like I said, when Congress agreed to adopt

a specific tax system [under R.A. 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from *ad valorem* which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.

Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. **But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be arbitrary for the BIR to do so.** x x x [80] (Emphasis supplied)

For these reasons, the amendments introduced by RA 9334 to RA 8240, insofar as the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place then, *i.e.* new brands as being covered by the freezing mechanism after their classification based on their current net retail prices.

Unfortunately for petitioner, this result will not cause a downward reclassification of Lucky Strike. It will be recalled that petitioner introduced Lucky Strike in June 2001. However, as admitted by petitioner itself, the BIR did not conduct the required market survey within three months from product launch. As a result, Lucky Strike was never classified based on its actual current net retail price. Petitioner failed to timely seek redress to compel the BIR to conduct the requisite market survey in order to fix the tax classification of Lucky Strike. In the meantime, Lucky Strike was taxed based on its *suggested* net retail price of ₱9.90 per pack, which is within the high-priced tax bracket. It was only after the lapse of two years or in 2003 that the BIR conducted a market survey which was the *first*

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[80] RECORD, SENATE 13TH CONGRESS (December 6, 2004).

time that Lucky Strike's *actual* current net retail price was surveyed and found to be from ₱10.34 to ₱11.53 per pack, which is within the premium-priced tax bracket. The case of petitioner falls under a situation where there was no reclassification based on its current net retail price which would have been invalid as previously explained. Thus, we cannot grant petitioner's prayer for a downward reclassification of Lucky Strike because it was never reclassified by the BIR based on its *actual* current net retail price.

It should be noted though that on August 8, 2003, the BIR issued Revenue Regulations No. 22-2003 which implemented the revised tax classifications of new brands based on their current net retail prices through the market survey conducted pursuant to Revenue Regulations No. 9-2003. Annex "A" of Revenue Regulations No. 22-2003 lists the result of the market survey and the corresponding recommended tax classification of the new brands therein aside from Lucky Strike. However, whether these other brands were illegally reclassified based on their actual current net retail prices by the BIR must be determined on a case-to-case basis because it is possible that these brands were classified based on their actual current net retail price for the first time in the year 2003 just like Lucky Strike. Thus, we shall not make any pronouncement as to the validity of the tax classifications of the other brands listed therein.

Finally, it must be noted that RA 9334 introduced changes in the manner by which the current net retail price of a new brand is determined and how its classification is permanently fixed, to wit:

> New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.
>
> New brands shall mean a brand registered after the date of effectivity of R.A. No. 8240 [on January 1, 1997].
>
> Suggested net retail price shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported cigarettes are intended by the manufacture or importer to be sold

on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. **At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified;** Provided however, That brands of cigarettes introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. **Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.** (Emphasis supplied)

Thus, Revenue Regulations No. 9-2003 and Revenue Memorandum Order No. 6-2003 should be deemed modified by the above provisions from the date of effectivity of RA 9334 on January 1, 2005.

In sum, Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Sections II(1)(b), II(4)(b), II(6), II(7), III (*Large Tax Payers Assistance Division II)* II(b) of Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier. Further, these provisions are deemed modified upon the effectivity of RA 9334 on January 1, 2005 insofar as the manner of determining the permanent classification of new brands is concerned.

We now tackle the last issue.

Petitioner contends that RA 8240, as amended by RA 9334, and its implementing rules and regulations violate the General Agreement on Tariffs and Trade (GATT) of 1947, as amended,

specifically, Paragraph 2, Article III, Part II:

> 2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

It claims that it is the duty of this Court to correct, in favor of the GATT, whatever inconsistency exists between the assailed law and the GATT in order to prevent triggering the international dispute settlement mechanism under the GATT-WTO Agreement.

We disagree.

The *classification freeze provision* uniformly applies to all newly introduced brands in the market, whether imported or locally manufactured. It does not purport to single out imported cigarettes in order to unduly favor locally produced ones. Further, petitioner's evidence was anchored on the alleged unequal tax treatment between old and new brands which involves a different frame of reference *vis-à-vis* local and imported products. Petitioner has, therefore, failed to clearly prove its case, both factually and legally, within the parameters of the GATT.

At any rate, even assuming *arguendo* that petitioner was able to prove that the *classification freeze provision* violates the GATT, the outcome would still be the same. The GATT is a treaty duly ratified by the Philippine Senate and under Article VII, Section 21[81] of the Constitution, it merely acquired

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[81] Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

the status of a statute.[82] Applying the basic principles of statutory construction in case of irreconcilable conflict between statutes, RA 8240, as amended by RA 9334, would prevail over the GATT either as a later enactment by Congress or as a special law dealing with the taxation of sin products. Thus, in *Abbas v. Commission on Elections*,[83] we had occasion to explain:

> Petitioners premise their arguments on the assumption that the Tripoli Agreement is part of the law of the land, being a binding international agreement. The Solicitor General asserts that the Tripoli Agreement is neither a binding treaty, not having been entered into by the Republic of the Philippines with a sovereign state and ratified according to the provisions of the 1973 or 1987 Constitutions, nor a binding international agreement.
>
> We find it neither necessary nor determinative of the case to rule on the nature of the Tripoli Agreement and its binding effect on the Philippine Government whether under public international or internal Philippine law. In the first place, it is now the Constitution itself that provides for the creation of an autonomous region in Muslim Mindanao. The standard for any inquiry into the validity of R.A. No. 6734 would therefore be what is so provided in the Constitution. Thus, any conflict between the provisions of R.A. No. 6734 and the provisions of the Tripoli Agreement will not have the effect of enjoining the implementation of the Organic Act. **Assuming for the sake of argument that the Tripoli Agreement is a binding treaty or international agreement, it would then constitute part of the law of the land. But as internal law it would not be superior to R.A. No. 6734, an enactment of the Congress of the Philippines, rather it would be in the same class as the latter** [SALONGA, *PUBLIC INTERNATIONAL LAW* 320 (4th ed., 1974), citing Head Money Cases, 112 U.S. 580 (1884) and *Foster v. Nelson*, 2 Pet. 253 (1829)]. **Thus, if at all, R.A. No. 6734 would be amendatory of the Tripoli Agreement,**

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[82] The Philippine Senate ratified the GATT on December 14, 1994. See Merlin M. Magallona, *Fundamentals of Public International Law*, 2005 ed., pp. 545-546.

[83] G.R. No. 89651, November 10, 1989, 179 SCRA 287, 294 cited in Magallona, *supra* at 552.

being a subsequent law. Only a determination by this Court that R.A. No. 6734 contravenes the Constitution would result in the granting of the reliefs sought. (Emphasis supplied)

WHEREFORE, the petition is *PARTIALLY GRANTED* and the decision of the Regional Trial Court of Makati, Branch 61, in Civil Case No. 03-1032, is *AFFIRMED* with *MODIFICATION*. As modified, this Court declares that:

(1) Section 145 of the NIRC, as amended by Republic Act No. 9334, is *CONSTITUTIONAL*; and that

(2) Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Sections II(1)(b), II(4)(b), II(6), II(7), III (*Large Tax Payers Assistance Division II)* II(b) of Revenue Memorandum Order No. 6-2003, insofar as pertinent to cigarettes packed by machine, are *INVALID* insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier.

SO ORDERED.

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

Carpio, J., on official leave.

Nachura, J., no part. Signed pleading as Solicitor General.

EN BANC

[G.R. No. 167503. August 20, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUISITO BAUN *y* MERCADO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; PLEA OF GUILTY TO CAPITAL OFFENSE; SEARCHING INQUIRY, GUIDELINES IN THE CONDUCT THEREOF.— *People v. Aguilar* reiterated the guidelines prescribed by the Court in the conduct of a searching inquiry, thus: (1)Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes. (2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty. (3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty. (4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment. (5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements

of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process. (6) All questions posed to the accused should be in a language known and understood by the latter. (7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

2. ID.; ID.; ID.; ID.; THE MANNER IN WHICH THE PLEA OF GUILTY IS MADE LOSES LEGAL SIGNIFICANCE WHERE THE CONVICTION IS BASED ON THE EVIDENCE PROVING THE COMMISSION BY THE ACCUSED OF THE OFFENSE CHARGED.— The Court notes that the trial court did not strictly observe the prescribed guidelines in conducting a searching inquiry when appellant entered a plea of guilty at his re-arraignment. Nevertheless, the Court sustains appellant's conviction based on the evidence presented by the prosecution before the trial court. *People v. Derilo* held: While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand a case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged. The Court carefully reviewed the records of this case and found private complainant's straightforward narration of the rape incidents to be credible. Moreover, the medical certificate showed that private complainant's vaginal orifice "[a]dmits 1 finger with ease; with hymenal lacerations; old, healed, complete at 3 and 9 o'clock positions; incomplete at 4 and 8 o'clock positions," which corroborated her testimony that she was raped.

3. CRIMINAL LAW; INCESTUOUS RAPE; THE FATHER'S MORAL ASCENDANCY AND INFLUENCE OVER HIS DAUGHTER

SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.— Paragraph 1 (a) of Art. 266-A of the Revised Penal Code provides that rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation. Settled is the ruled that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation. The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants. The record fully bears out the incidents of rape.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ACCUSED MAY BE CONVICTED ON THE BASIS OF THE LONE TESTIMONY OF THE RAPE VICTIM WHERE THE SAME MEETS THE TEST OF CREDIBILITY.— The rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on that basis. It was noted in the transcript of stenographic notes that private complainant, then 14 years old, was crying while she was testifying before the trial court. It has been held in several cases that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when she recounts the detail of her traumatic experience.

5. ID.; ID.; ID.; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is against human nature for a girl to fabricate a story that would expose herself and her family to a lifetime of dishonor, especially where her charges would mean the death or the long-term imprisonment of her own father. Youth and immaturity are generally badges of truth and sincerity.

The weight of such testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.

6. ID.; ID.; ID.; THE CREDIBLE DISCLOSURE OF A MINOR THAT THE ACCUSED RAPED HER IS THE MOST IMPORTANT PROOF OF THE SEXUAL ABUSE.— Further, appellant's counsel contends that the medical finding showing hymenal lacerations is not a conclusive proof that appellant raped private complainant. He stressed that sexual intercourse is not the sole and exclusive reason for hymenal rapture. The Court is well aware of such fact. However, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse.

7. CRIMINAL LAW; INCESTUOUS RAPE; IMPOSABLE PENALTY; THE CONCURRENCE OF THE SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP MUST BE ALLEGED AND PROVED FOR THE PENALTY OF DEATH TO BE DECREED.— In fine, the Court agrees with the finding of the Court of Appeals that appellant is guilty beyond reasonable doubt of the crime of rape committed four times against private complainant. The first two incidents of rape were committed when she was 13 years old, while the third and fourth incidents of rape were committed when she was 14 years old. Under Art. 266-B of the Revised Penal Code as amended, the crime of rape committed by appellant against his own daughter is punished with the death penalty, thus: xxx The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the complaint or information for the penalty of death to be decreed. The Constitution guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him. It is a requirement that renders it essential for every element of the offense with which he is charged to be properly alleged in the complaint or information. The Revised Rules on Criminal Procedure, which took effect on December 1, 2000, requires

qualifying and aggravating circumstances to be stated in the Complaint or Information. In this case, the minority of private complainant and her relationship to appellant were alleged in the four Informations and proven in court, warranting the imposition of the death penalty. However, the imposition of the death penalty has been prohibited by Republic Act No. 9346 which took effect on June 30, 2006. xxx Hence, the death penalty imposed on appellant is reduced to *reclusion perpetua*, without eligibility for parole.

8. ID.; ID.; CIVIL LIABILITY OF ACCUSED APPELLANT.— Finally, the Court of Appeals correctly sustained the trial court's award to private complainant of civil indemnity in the amount of ₱75,000 and moral damages in the amount of ₱50,000 for each case. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender. Private complainant is entitled to moral damages for having suffered mental and emotional injuries. The Court of Appeals also correctly awarded private complainant exemplary damages in the amount of ₱25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00266 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Siniloan, Laguna, Branch 33, dated August 12, 2000, finding appellant Luisito Baun guilty of four counts of rape and imposing on him the death penalty.

The facts are as follows:

On January 15, 2002, four (4) Informations[1] for qualified rape were filed against the appellant, which read:

CRIMINAL CASE NO. S-5932

That on or about July 21, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5933

That on or about August 9, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5934

That on or about August 15, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

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[1] *Records*, vol. 1, p. 1; vol. 2, p. 1; vol. 3, p. 1; vol. 4, p. 1.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5935

That on or about September 30, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.[2]

CONTRARY TO LAW.

When arraigned on April 15, 2002, appellant, with the assistance of his counsel, entered pleas of "not guilty" to the crimes charged.

During the hearing on July 22, 2002, appellant, through counsel, manifested his desire to withdraw his earlier pleas of not guilty and be re-arraigned for the purpose of entering pleas of guilty. Thus, appellant was re-arraigned and pleaded guilty to the four counts of rape.

The trial court asked appellant questions to determine the voluntariness and full comprehension of the consequences of his pleas of guilty to a capital offense in accordance with Sec. 3, Rule 116 of the Rules of Court.

Notwithstanding the pleas of guilty, trial was held to determine the guilt of appellant.

The evidence presented by the prosecution consisted of private complainant's testimony, sworn statement, medical certificate

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[2] The names of the private complainant and members of her immediate family are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

and birth certificate.

Private complainant's birth certificate showed that she was born on August 10, 1987 and that the name of her father is Luisito Baun.

Private complainant testified that she was only 13 years old when appellant first raped her on July 21, 2001 and again on August 9, 2001 in their home in Mabitac, Laguna. Thereafter, she was again raped on August 15, 2001 and September 30, 2001, when private complainant was 14 years old. The four counts of rape were committed at night when everyone was asleep, and private complainant's mother was in Manila. Appellant had carnal knowledge of her in the same room where her 15-year-old brother was sleeping.[3]

Private complainant stated that she did not tell her brother about the rape incidents because she was afraid that appellant would beat her. But she confided in her friends and they advised her to report the matter to their teacher, which she did. Her teacher advised her to report the matter to the sister of her father.[4]

On October 7, 2001, private complainant, accompanied by her mother, reported the rape incidents to the police at the Mabitac Municipal Police Station where she executed a sworn statement.[5]

Thereafter, private complainant proceeded to General Cailles Memorial District Hospital of Pakil, Laguna, for medical examination. The medical certificate[6] issued to private complainant reads:

Pertinent Physical Examination:

General Survey:	F/N, F/D, afebrile, not in distress, no evidence of external physical injuries.

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[3] TSN, August 5, 2002, pp. 3-6.

[4] *Id.* at 6-8.

[5] *Id.* at 8; Exh. "A", *records*, vol.1, p. 9.

[6] Exh. "C", *records*, vol.1, p. 7.

Genitalia:	Non-gaping vaginal orifice.	
Internal Examination:	Admits 1 finger with ease; with hymenal lacerations; old, healed, complete at 3 and 9 o'clock positions; incomplete at 4 and 8 o'clock positions. Whitish non mucoidal, non foul smelling minimal discharge.	
Vaginal smear done:	Pus cells	0-2/hpf
	RBC	0-1/hpf
	Bacteria	++, no sperm cells found.

After the testimony of private complainant, the prosecution formally offered in evidence private complainant's sworn statement, medical certificate, and birth certificate before resting its case.

The defense was allowed to comment on the exhibits, and it admitted the same. Hence, all exhibits were admitted by the trial court.

On August 12, 2002, the RTC rendered a decision, the dispositive portion of which reads:

> WHEREFORE, finding accused LUISITO MERCADO BAUN guilty beyond reasonable doubt of not only one but four (4) cases of rape on his own daughter, [AAA], he is hereby sentenced to suffer the penalty of DEATH for each case.
>
> Similarly, he is hereby ordered to pay the above complainant-offended party the sum of ₱75,000.00 as actual damages for each case or the total amount of ₱300,000.00 and moral damages in the sum of ₱50,000.00 for each case or the total sum of ₱200,000.00.
>
> No exemplary damages was proven, hence, nothing is awarded to her.
>
> SO ORDERED.[7]

The case was elevated to this Court for automatic review.

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[7] CA *rollo*, p. 34.

The Court transferred the case to the Court of Appeals for intermediate review following *People v. Mateo*.[8]

In the Decision promulgated on February 15, 2005, the Court of Appeals affirmed the Decision of the RTC with modification. The dispositive portion of the decision reads:

> WHEREFORE, in the light of the foregoing, the decision of the Regional Trial Court of Siniloan, Laguna, Branch 33 dated August 12, 2002 is AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay the private complainant for each count of rape, the amount of ₱25,000.00 as exemplary damages in addition to the moral damages and civil indemnity awarded by the trial court.
>
> In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review.[9]

In a Resolution dated May 10, 2005, the Court accepted this case from the Court of Appeals and required the parties to simultaneously submit supplemental briefs if they so desired. Appellant, through counsel (Public Attorney's Office), submitted his supplemental brief on July 7, 2005, while appellee, through the Office of the Solicitor General, submitted its brief on August 9, 2005.

Appellant assigned these errors:

> 1. The Court of Appeals erred in affirming appellant's conviction of the crimes charged despite his improvident plea of guilty.
>
> 2. The Court of Appeals erred in finding that appellant's guilt was proven beyond reasonable doubt.[10]

Appellant contends that the trial court failed to observe the rules when an accused enters a plea of guilty to a capital offense. It failed to conduct a searching inquiry to determine whether

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[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] *Rollo*, p. 17.

[10] *Id.* at 39.

appellant's plea of guilty was voluntary, with full comprehension of the consequences thereof, and to inquire whether appellant wished to present evidence on his own behalf.

The conduct of a searching inquiry is provided for in Sec. 3, Rule 116 of the Rules of Court, thus:

> Sec. 3. *Plea of guilty to capital offense; reception of evidence*.— When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

People v. Aguilar[11] reiterated the guidelines prescribed by the Court in the conduct of a searching inquiry, thus:

> (1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
>
> (2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
>
> (3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
>
> (4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he

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[11] G.R. No. 172868, March 14, 2008.

admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

The full text of the trial's court searching inquiry reads:

Interpreter : Criminal Cases Nos. S-5932, S-5933, S-5934 and S-5935, *People of the Philippines versus Luisito Baun*, for RAPE.'

Atty. Gatdula : Appearing for the accused, your Honor. Your Honor, we are moving for the withdrawal of the previous plea of not guilty of the accused and to allow said accused to plead guilty to the crime of rape in all those 4 cases of rape.

Accused : LUISITO BAUN, 37 years old, residing at Pag-asa, Mabitac, Laguna.

QUESTION OF THE COURT:

Q Mr. Baun you have just pleaded guilty in these four (4) counts of rape against your daughter [AAA], do you know the consequences of your pleading to those 4 counts of rape?
A Yes, your Honor.

Q With your plea of guilty you will be sentenced to life imprisonment, do you know that?
A Yes, your Honor.

Q With your entry of plea of guilty as far as these 4 cases are concerned do you enter voluntarily?
A Yes, your Honor.

Q Nobody forced you to plead guilty?
A None, your Honor.

Q You were informed before entering a plea of guilty of your rights that you have the right to enter plea of guilty to the offense?
A Yes, your Honor.

Q Do you understand that?
A Yes, your Honor.

Q Last question of the Court, do you still want to maintain your plea of guilty to these four (4) cases of rape filed by your daughter against you?
A Yes, your Honor.

Court:
That is all.

Prosecutor:
We are just seeking justice, your Honor, we are waiving our right to claim damages.[12]

The Court notes that the trial court did not strictly observe the prescribed guidelines in conducting a searching inquiry when appellant entered a plea of guilty at his re-arraignment.

Nevertheless, the Court sustains appellant's conviction based on the evidence presented by the prosecution before the trial court. *People v. Derilo*[13] held:

While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand a case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is

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[12] TSN, July 22, 2002, pp. 2-3.

[13] G.R. No. 117818, April 18, 1997, 271 SCRA 633.

the sole basis of the condemnatory judgment. However, **where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged**.[14]

The Court carefully reviewed the records of this case and found private complainant's straightforward narration of the rape incidents to be credible. Moreover, the medical certificate showed that private complainant's vaginal orifice "[a]dmits 1 finger with ease; with hymenal lacerations; old, healed, complete at 3 and 9 o'clock positions; incomplete at 4 and 8 o'clock positions," which corroborated her testimony that she was raped.

Paragraph 1(a) of Art. 266-A of the Revised Penal Code provides that rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation.

Settled is the ruled that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation.[15] The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents.[16] Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law.[17] Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[18] The record fully bears out the incidents of rape.[19]

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[14] Emphasis supplied.

[15] *People v. Francisco*, G.R. Nos. 134566-67, January 22, 2001, 350 SCRA 55.

[16] *Id.* at 65-66.

[17] *Id.* at 66.

[18] *Ibid.*

[19] TSN, August 5, 2002, pp. 2-8.

The rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on that basis.[20]

It was noted in the transcript of stenographic notes that private complainant, then 14 years old, was crying while she was testifying before the trial court. It has been held in several cases that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when she recounts the detail of her traumatic experience.[21]

No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[22] It is against human nature for a girl to fabricate a story that would expose herself and her family to a lifetime of dishonor, especially where her charges would mean the death or the long-term imprisonment of her own father.[23] Youth and immaturity are generally badges of truth and sincerity.[24] The weight of such testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[25]

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[20] *People v. Ambray*, G.R. No. 127177, February 25, 1999, 303 SCRA 697.

[21] *People v. Manlod*, G.R. Nos. 142901-02, July 23, 2002, 385 SCRA 134.

[22] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[23] *People v. Manlod*, *supra* note 21.

[24] *People v. Bon*, *supra* note 22.

[25] *Ibid.*

The Court is not persuaded by the argument of appellant's counsel that private complainant's testimony was not free from doubt because her brother was sleeping in the same room where the rape incidents happened. It is contended that it was highly improbable for private complainant's brother not to tell his mother that he saw his father naked on top of his sister doing something since it is customary for children to disclose unusual things or events they see. They are not known to keep a secret all to themselves as they normally find ways to relate it to anybody.

The argument is without merit.

Private complainant's brother did not testify in court, and it was not stated in the transcript of stenographic notes that his sworn statement was offered in evidence. Hence, his sworn statement cannot be given any evidentiary value by this Court. Even if the trial court considered his sworn statement in its Decision, the argument raised by appellant's counsel cannot detract from the credible testimony of private complainant that she was raped by appellant.

Further, appellant's counsel contends that the medical finding showing hymenal lacerations is not a conclusive proof that appellant raped private complainant. He stressed that sexual intercourse is not the sole and exclusive reason for hymenal rapture.

The Court is well aware of such fact. However, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[26] The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse.[27]

In fine, the Court agrees with the finding of the Court of Appeals that appellant is guilty beyond reasonable doubt of the crime of rape committed four times against private complainant.

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[26] *People v. Orilla,* G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 634.

[27] *Ibid.*

The first two incidents of rape were committed when she was 13 years old, while the third and fourth incidents of rape were committed when she was 14 years old.

Under Art. 266-B of the Revised Penal Code as amended,[28] the crime of rape committed by appellant against his own daughter is punished with the death penalty, thus:

> Article 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
>
> **The death penalty shall also be imposed** if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) **When the victim is under eighteen (18) years of age and the offender is a parent**, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the complaint or information for the penalty of death to be decreed.[29] The Constitution guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him.[30] It is a requirement that renders it essential for every element of the offense with which he is charged to be properly alleged in the complaint or information.[31]

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[28] As amended by Republic Act No. 8353, the Anti-Rape Law of 1997, which took effect on October 22, 1997.

[29] *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 630.

[30] *Ibid.*

[31] *Ibid.*

The Revised Rules on Criminal Procedure,[32] which took effect on December 1, 2000, requires qualifying and aggravating circumstances to be stated in the Complaint or Information.

In this case, the minority of private complainant and her relationship to appellant were alleged in the four Informations and proven in court, warranting the imposition of the death penalty.

However, the imposition of the death penalty has been prohibited by Republic Act No. 9346[33] which took effect on June 30, 2006. Sections 2 and 3 of the Act provide:

> Sec. 2. In lieu of the death penalty, the following shall be imposed:
> (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;
>
> x x x x x x x x x
>
> Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Hence, the death penalty imposed on appellant is reduced *to reclusion perpetua*, without eligibility for parole.

Finally, the Court of Appeals correctly sustained the trial court's award to private complainant of civil indemnity in the amount of ₱75,000 and moral damages in the amount of ₱50,000 for each case. Civil indemnity is automatically awarded upon

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[32] Rule 110, Sec. 8. *Designation of the offense.* – ***The complaint or information shall*** state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and ***specify its qualifying and aggravating circumstances***. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied.)

[33] "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

proof of the commission of the crime by the offender.[34] Private complainant is entitled to moral damages for having suffered mental and emotional injuries.[35]

The Court of Appeals also correctly awarded private complainant exemplary damages in the amount of ₱25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.[36]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 00266 is hereby *AFFIRMED* with *MODIFICATION*. Appellant *LUISITO BAUN* is found *GUILTY* beyond reasonable doubt of committing four counts of Rape against private complainant, but the penalty of death imposed upon him is *REDUCED* to four penalties of *reclusion perpetua*, without eligibility for parole. Appellant is ordered to pay private complainant AAA moral damages in the amount of Fifty Thousand Pesos (₱50,000) for each case; civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000) for each case.

No costs.

SO ORDERED.

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

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[34] *People v. Orilla, supra,* note 26, at 646.

[35] *Id.* at 645.

[36] Civil Code, 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.

THIRD DIVISION

[G.R. No. 168274. August 20, 2008]

FAR EAST BANK & TRUST COMPANY, *petitioner, vs.* **GOLD PALACE JEWELLERY CO., as represented by Judy L. Yang, Julie Yang-Go and Kho Soon Huat,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; LIABILITY OF ACCEPTOR; THE DRAWEE'S ACTUAL PAYMENT OF THE AMOUNT IN THE CHECK IMPLIES NOT ONLY HIS ASSENT TO THE ORDER OF THE DRAWER AND A RECOGNITION OF HIS CORRESPONDING OBLIGATION TO PAY THE AFOREMENTIONED SUM, BUT ALSO HIS CLEAR COMPLIANCE WITH THAT OBLIGATION.— Act No. 2031, or the Negotiable Instruments Law (NIL), explicitly provides that the acceptor, by accepting the instrument, engages that he will pay it *according to the tenor of his acceptance*. This provision applies with equal force in case the drawee pays a bill without having previously accepted it. His actual payment of the amount in the check implies not only his assent to the order of the drawer and a recognition of his corresponding obligation to pay the aforementioned sum, but also, his clear compliance with that obligation. Actual payment by the drawee is greater than his acceptance, which is merely a promise in writing to pay. The payment of a check includes its acceptance.

2. ID.; ID.; ID.; ID.; THE TENOR OF THE ACCEPTANCE IS DETERMINED BY THE TERMS OF THE BILL AS IT IS WHEN THE DRAWEE ACCEPTS.— Unmistakable herein is the fact that the drawee bank cleared and paid the subject foreign draft and forwarded the amount thereof to the collecting bank. The latter then credited to Gold Palace's account the payment it received. Following the plain language of the law, the drawee, by the said payment, recognized and complied with its obligation to pay in accordance with the *tenor of his acceptance*. The *tenor of the acceptance* is determined by the terms of the bill as it is when the drawee accepts. Stated simply, LBP was liable

on its payment of the check according to the tenor of the check at the time of payment, which was the raised amount.

3. ID.; ID.; ID.; ID.; ID.; COMMERCIAL POLICY FAVORS PROTECTION OF ANY ONE WHO, IN DUE COURSE, CHANGES HIS POSITION ON THE FAITH OF THE DRAWEE BANK'S CLEARANCE AND PAYMENT OF A CHECK OR DRAFT.— Because of that engagement, LBP could no longer repudiate the payment it erroneously made to a due course holder. We note at this point that Gold Palace was not a participant in the alteration of the draft, was not negligent, and was a holder in due course — it received the draft complete and regular on its face, before it became overdue and without notice of any dishonor, in good faith and for value, and absent any knowledge of any infirmity in the instrument or defect in the title of the person negotiating it. Having relied on the drawee bank's clearance and payment of the draft and not being negligent (it delivered the purchased jewelry only when the draft was cleared and paid), respondent is amply protected by the said Section 62. Commercial policy favors the protection of any one who, in due course, changes his position on the faith of the drawee bank's clearance and payment of a check or draft.

4. ID.; ID.; ID.; DRAWEE BANK CAN RECOVER FROM THE HOLDER IN DUE COURSE MONEY PAID TO HIM BY MISTAKE; PRINCIPLE INAPPLICABLE TO CASE AT BAR.— This construction and application of the law gives effect to the plain language of the NIL and is in line with the sound principle that where one of two innocent parties must suffer a loss, the law will leave the loss where it finds it. It further reasserts the usefulness, stability and currency of negotiable paper without seriously endangering accepted banking practices. Indeed, banking institutions can readily protect themselves against liability on altered instruments either by qualifying their acceptance or certification, or by relying on forgery insurance and special paper which will make alterations obvious. This is not to mention, but we state nevertheless for emphasis, that the drawee bank, in most cases, is in a better position, compared to the holder, to verify with the drawer the matters stated in the instrument. As we have observed in this case, were it not for LBP's communication with the drawer that its account in

the Philippines was being depleted after the subject foreign draft had been encashed, then, the alteration would not have been discovered. What we cannot understand is why LBP, having the most convenient means to correspond with UOB, did not first verify the amount of the draft before it cleared and paid the same. Gold Palace, on the other hand, had no facility to ascertain with the drawer, UOB Malaysia, the true amount in the draft. It was left with no option but to rely on the representations of LBP that the draft was good. In arriving at this conclusion, the Court is not closing its eyes to the other view espoused in common law jurisdictions that a *drawee bank, having paid to an innocent holder the amount of an uncertified, altered check in good faith and without negligence which contributed to the loss, could recover from the person to whom payment was made as for money paid by mistake.* However, given the foregoing discussion, we find no compelling reason to apply the principle to the instant case.

5. ID.; ID.; THE SUBSEQUENT PAYMENT BY THE DRAWEE BANK AND THE COLLECTION OF THE AMOUNT BY THE COLLECTING BANK CLOSED THE TRANSACTION INSOFAR AS THE DRAWEE AND THE HOLDER OF THE CHECK ARE CONCERNED, CONVERTED THE CHECK INTO A MERE VOUCHER, AND FORECLOSED THE RECOVERY BY THE DRAWEE OF THE AMOUNT PAID.— Thus, considering that, in this case, Gold Palace is protected by Section 62 of the NIL, its collecting agent, Far East, should not have debited the money paid by the drawee bank from respondent company's account. When Gold Palace deposited the check with Far East, the latter, under the terms of the deposit and the provisions of the NIL, became an agent of the former for the collection of the amount in the draft. The subsequent payment by the drawee bank and the collection of the amount by the collecting bank closed the transaction insofar as the drawee and the holder of the check or his agent are concerned, converted the check into a mere voucher, and, as already discussed, foreclosed the recovery by the drawee of the amount paid. This closure of the transaction is a matter of course; otherwise, uncertainty in commercial transactions, delay and annoyance will arise if a bank at some future time will call on the payee for the return of the money paid to him on the check.

6. ID.; ID.; RESTRICTIVE INDORSEMENT; INDORSEMENT IS ONLY FOR PURPOSES OF COLLECTION; NO TRANSFER OF TITLE OF THE INSTRUMENT TO THE COLLECTING BANK.— As the transaction in this case had been closed and the principal-agent relationship between the payee and the collecting bank had already ceased, the latter in returning the amount to the drawee bank was already acting on its own and should now be responsible for its own actions. Neither can petitioner be considered to have acted as the representative of the drawee bank when it debited respondent's account, because, as already explained, the drawee bank had no right to recover what it paid. Likewise, Far East cannot invoke the warranty of the payee/depositor who indorsed the instrument for collection to shift the burden it brought upon itself. This is precisely because the said indorsement is only for purposes of collection which, under Section 36 of the NIL, is a restrictive indorsement. It did not in any way transfer the title of the instrument to the collecting bank. Far East did not own the draft, it merely presented it for payment. Considering that the warranties of a general indorser as provided in Section 66 of the NIL are based upon a transfer of title and are available only to holders in due course, these warranties did not attach to the indorsement for deposit and collection made by Gold Palace to Far East. Without any legal right to do so, the collecting bank, therefore, could not debit respondent's account for the amount it refunded to the drawee bank.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo & Burkley Law Offices for petitioner.

Jara & Eduardo for respondents.

D E C I S I O N

NACHURA, *J.*:

For the review of the Court through a Rule 45 petition are the following issuances of the Court of Appeals (CA) in CA-

G.R. CV No. 71858: (1) the March 15, 2005 Decision[1] which reversed the trial court's ruling, and (2) the May 26, 2005 Resolution[2] which denied the motion for reconsideration of the said CA decision.

The instant controversy traces its roots to a transaction consummated sometime in June 1998, when a foreigner, identified as Samuel Tagoe, purchased from the respondent Gold Palace Jewellery Co.'s (Gold Palace's) store at SM-North EDSA several pieces of jewelry valued at ₱258,000.00.[3] In payment of the same, he offered Foreign Draft No. M-069670 issued by the United Overseas Bank (Malaysia) BHD Medan Pasar, Kuala Lumpur Branch (UOB), addressed to the Land Bank of the Philippines, Manila (LBP), and payable to the respondent company for ₱380,000.00.[4]

Before receiving the draft, respondent Judy Yang, the assistant general manager of Gold Palace, inquired from petitioner Far East Bank & Trust Company's (Far East's) SM North EDSA Branch, its neighbor mall tenant, the nature of the draft. The teller informed her that the same was similar to a manager's check, but advised her not to release the pieces of jewelry until the draft had been cleared.[5] Following the bank's advice, Yang issued Cash Invoice No. 1609[6] to the foreigner, asked him to come back, and informed him that the pieces of jewelry would be released when the draft had already been cleared.[7] Respondent Julie Yang-Go, the manager of Gold Palace,

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin, concurring; CA *rollo*, pp. 78-126.

[2] *Id.* at 203-205.

[3] TSN, December 6, 2000, pp. 8-10.

[4] Records, p. 121.

[5] TSN, December 6, 2000, pp. 9-10.

[6] Records, p. 161.

[7] TSN, December 6, 2000, p. 10.

consequently deposited the draft in the company's account with the aforementioned Far East branch on June 2, 1998.[8]

When Far East, the collecting bank, presented the draft for clearing to LBP, the drawee bank, the latter cleared the same[9] —UOB's account with LBP was debited,[10] and Gold Palace's account with Far East was credited with the amount stated in the draft.[11]

The foreigner eventually returned to respondent's store on June 6, 1998 to claim the purchased goods. After ascertaining that the draft had been cleared, respondent Yang released the pieces of jewelry to Samuel Tagoe; and because the amount in the draft was more than the value of the goods purchased, she issued, as his change, Far East Check No. 1730881[12] for ₱122,000.00.[13] This check was later presented for encashment and was, in fact, paid by the said bank.[14]

On June 26, 1998, or after around three weeks, LBP informed Far East that the amount in Foreign Draft No. M-069670 had been materially altered from ₱300.00 to ₱380,000.00 and that it was returning the same. Attached to its official correspondence were Special Clearing Receipt No. 002593 and the duly notarized and consul-authenticated affidavit of a corporate officer of the drawer, UOB.[15] It is noted at this point that the material alteration was discovered by UOB after LBP had informed it that its funds were being depleted following the encashment of the

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[8] Records, pp. 121, 162.

[9] TSN, October 6, 1999, pp. 21-22, 36.

[10] TSN, February 23, 2000, p. 8.

[11] TSN, October 6, 1999, p. 22.

[12] Records, p. 159.

[13] TSN, December 6, 2000, pp. 13-14.

[14] *Id.*

[15] Records, pp. 124-127.

subject draft.[16] Intending to debit the amount from respondent's account, Far East subsequently refunded the ₱380,000.00 earlier paid by LBP.

Gold Palace, in the meantime, had already utilized portions of the amount. Thus, on July 20, 1998, as the outstanding balance of its account was already inadequate, Far East was able to debit only ₱168,053.36,[17] but this was done without a prior written notice to the account holder.[18] Far East only notified by phone the representatives of the respondent company.[19]

On August 12, 1998, petitioner demanded from respondents the payment of ₱211,946.64 or the difference between the amount in the materially altered draft and the amount debited from the respondent company's account.[20] Because Gold Palace did not heed the demand, Far East consequently instituted Civil Case No. 99-296 for sum of money and damages before the Regional Trial Court (RTC), Branch 64 of Makati City.[21]

In their Answer, respondents specifically denied the material allegations in the complaint and interposed as a defense that the complaint states no cause of action—the subject foreign draft having been cleared and the respondent not being the party who made the material alteration. Respondents further counterclaimed for actual damages, moral and exemplary damages, and attorney's fees considering, among others, that the petitioner had confiscated without basis Gold Palace's balance in its account resulting in operational loss, and had maliciously imputed to the latter the act of alteration.[22]

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[16] TSN, February 23, 2000, pp. 8-10.

[17] *Id.* at 13; TSN, October 6, 1999, pp. 28-30.

[18] TSN, May, 10, 2000, pp. 17-19.

[19] *Id.* at 9-10.

[20] Records, p. 14.

[21] *Id.* at 1-6.

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

After trial on the merits, the RTC rendered its July 30, 2001 Decision[23] in favor of Far East, ordering Gold Palace to pay the former ₱211,946.64 as actual damages and ₱50,000.00 as attorney's fees.[24] The trial court ruled that, on the basis of its warranties as a general indorser, Gold Palace was liable to Far East.[25]

On appeal, the CA, in the assailed March 15, 2005 Decision,[26] reversed the ruling of the trial court and awarded respondents' counterclaim. It ruled in the main that Far East failed to undergo the proceedings on the protest of the foreign draft or to notify Gold Palace of the draft's dishonor; thus, Far East could not charge Gold Palace on its secondary liability as an indorser.[27] The appellate court further ruled that the drawee bank had cleared the check, and its remedy should be against the party responsible for the alteration. Considering that, in this case, Gold Palace neither altered the draft nor knew of the alteration, it could not be held liable.[28] The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the appeal is GRANTED; the assailed Decision dated 30 July 2001 of the Regional Trial Court of

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[23] *Id.* at 191-198.

[24] *Id.* at 198. The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered against defendant Gold Palace Jewellery Co., to pay plaintiff Far East Bank and Trust Co., the following:

a. The sum of ₱211,946.64, representing actual damages plus legal interest thereon from 26 June 1998, until the same is fully paid;

b. ₱50,000.00 as attorney's fees; and

c. Costs of suit.

SO ORDERED.

[25] *Id.* at 194-196.

[26] *Supra* note 1.

[27] CA *rollo*, pp. 106-112.

[28] *Id.* at 112-116.

Makati City, Branch 64 is hereby REVERSED and SET ASIDE; the Complaint dated January 1999 is DISMISSED; and appellee Far East Bank and Trust Company is hereby ordered to pay appellant Gold Palace Jewellery Company the amount of Php168,053.36 for actual damages plus legal interest of 12% per annum from 20 July 1998, Php50,000.00 for exemplary damages, and Php50,000.00 for attorney's fees. Costs against appellee Far East Bank and Trust Company.[29]

The appellate court, in the further challenged May 26, 2005 Resolution,[30] denied petitioner's Motion for Reconsideration,[31] which prompted the petitioner to institute before the Court the instant Petition for Review on *Certiorari*.[32]

We deny the petition.

Act No. 2031, or the Negotiable Instruments Law (NIL), explicitly provides that the acceptor, by accepting the instrument, engages that he will pay it *according to the tenor of his acceptance*.[33] This provision applies with equal force in case the drawee pays a bill without having previously accepted it. His actual payment of the amount in the check implies not only his assent to the order of the drawer and a recognition of his corresponding obligation to pay the aforementioned sum, but also, his clear compliance with that obligation.[34] Actual payment

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[29] *Id.* at 123.

[30] *Supra* note 2.

[31] CA *rollo*, pp. 127-142.

[32] *Rollo*, pp. 3-26.

[33] Section 62 of the NIL, which, in full, reads:

SECTION 62. *Liability of acceptor*.—The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(b) The existence of the payee and his then capacity to indorse.

[34] *Philippine National Bank v. Court of Appeals*, 134 Phil. 829, 833-835 (1968).

by the drawee is greater than his acceptance, which is merely a promise in writing to pay. The payment of a check includes its acceptance.[35]

Unmistakable herein is the fact that the drawee bank cleared and paid the subject foreign draft and forwarded the amount thereof to the collecting bank. The latter then credited to Gold Palace's account the payment it received. Following the plain language of the law, the drawee, by the said payment, recognized and complied with its obligation to pay in accordance with the *tenor of his acceptance*. The *tenor of the acceptance* is determined by the terms of the bill as it is when the drawee accepts.[36] Stated simply, LBP was liable on its payment of the check according to the tenor of the check at the time of payment, which was the raised amount.

Because of that engagement, LBP could no longer repudiate the payment it erroneously made to a due course holder. We note at this point that Gold Palace was not a participant in the alteration of the draft, was not negligent, and was a holder in due course — it received the draft complete and regular on its face, before it became overdue and without notice of any dishonor, in good faith and for value, and absent any knowledge of any infirmity in the instrument or defect in the title of the person negotiating it.[37] Having relied on the drawee bank's clearance

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[35] *Kansas Bankers Surety Company v. Ford County State Bank*, 184 Kan. 529, 534; 338 P.2d 309, 313 (1959).

[36] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al.*, 214 Cal. 156, 163; 4 P.2d 781, 784 (1931); citing Prof. Brannan in his work on *Negotiable Instruments Law* (4th Ed.) at page 567; *Kansas Bankers Surety Company v. Ford County State Bank, supra*.

[37] Section 52 of the NIL reads:

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

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

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

and payment of the draft and not being negligent (it delivered the purchased jewelry only when the draft was cleared and paid), respondent is amply protected by the said Section 62. Commercial policy favors the protection of any one who, in due course, changes his position on the faith of the drawee bank's clearance and payment of a check or draft.[38]

This construction and application of the law gives effect to the plain language of the NIL[39] and is in line with the sound principle that where one of two innocent parties must suffer a loss, the law will leave the loss where it finds it.[40] It further reasserts the usefulness, stability and currency of negotiable paper without seriously endangering accepted banking practices. Indeed, banking institutions can readily protect themselves against liability on altered instruments either by qualifying their acceptance or certification, or by relying on forgery insurance and special paper which will make alterations obvious.[41] This is not to mention, but we state nevertheless for emphasis, that the drawee bank, in most cases, is in a better position, compared to the

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

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

See *Vicente R. de Ocampo & Co. v. Gatchalian*, No. L-15126, November 30, 1961, 3 SCRA 596, in which the Court acknowledged the fact of negotiation of an instrument by an agent of the drawer to the payee.

[38] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra* note 36, at 165-166; see *Aetna Casualty & Surety Co. v. Corpus Christi National Bank*, 186 S.W.2d 840, 841-842 (1944); *The National Park Bank of New York v. The Seaboard Bank*, 69 Sickels 28, 114 N.Y. 28, 20 N.E. 632 (1889); *Seaboard Surety Company v. First National City Bank of New York*, 15 Misc.2d 816, 180 N.Y.S.2d 156 (1958).

[39] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra* note 36, at 165.

[40] *National City Bank of Chicago v. National Bank of the Republic of Chicago*, 300 Ill. 103, 108; 132 N.E. 832, 833 (1921).

[41] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra* note 36.

holder, to verify with the drawer the matters stated in the instrument. As we have observed in this case, were it not for LBP's communication with the drawer that its account in the Philippines was being depleted after the subject foreign draft had been encashed, then, the alteration would not have been discovered. What we cannot understand is why LBP, having the most convenient means to correspond with UOB, did not first verify the amount of the draft before it cleared and paid the same. Gold Palace, on the other hand, had no facility to ascertain with the drawer, UOB Malaysia, the true amount in the draft. It was left with no option but to rely on the representations of LBP that the draft was good.

In arriving at this conclusion, the Court is not closing its eyes to the other view espoused in common law jurisdictions that *a drawee bank, having paid to an innocent holder the amount of an uncertified, altered check in good faith and without negligence which contributed to the loss, could recover from the person to whom payment was made as for money paid by mistake*.[42] However, given the foregoing discussion, we find no compelling reason to apply the principle to the instant case.

The Court is also aware that under the Uniform Commercial Code in the United States of America, *if an unaccepted draft is presented to a drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer,*

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[42] *Central National Bank v. F.W. Drosten Jewelry Co.*, 203 Mo.App. 646, 220 S.W. 511 (1920); *Interstate Trust Co., et al. v. United States National Bank*, 67 Colo. 6, 185 P. 260, 10 A.L.R. 705 (1919); *National Park Bank of New York v. Eldred Bank*, 90 Hun 285, 70 N.Y.St.Rep. 497, 35 N.Y.S. 752 (1895); *Third National Bank of St. Louis v. Thomas Allen*, 59 Mo. 310, 1875 WL 7732 (Mo.) (1875); *The Marine National Bank v. The National City Bank*, 10 Alb. L.J. 360, 59 N.Y. 67, 17 Am. Rep. 305 (1874); *Espy v. Bank of Cincinnati*, 85 U.S. 604, 18 Wall 604, 21 L. Ed. 947 (1874); *Redington, et al. v. Woods, et al.*, 45 Cal. 406, 13 Am. Rep. 190 (1873).

warrant to the drawee making payment or accepting the draft in good faith that the draft has not been altered.[43] Nonetheless, absent any similar provision in our law, we cannot extend the same preferential treatment to the paying bank.

Thus, considering that, in this case, Gold Palace is protected by Section 62 of the NIL, its collecting agent, Far East, should not have debited the money paid by the drawee bank from respondent company's account. When Gold Palace deposited the check with Far East, the latter, under the terms of the deposit and the provisions of the NIL, became an agent of the former for the collection of the amount in the draft.[44] The subsequent payment by the drawee bank and the collection of the amount by the collecting bank closed the transaction insofar as the drawee and the holder of the check or his agent are concerned, converted the check into a mere voucher,[45] and, as already discussed, foreclosed the recovery by the drawee of the amount paid. This closure of the transaction is a matter of course; otherwise, uncertainty in commercial transactions, delay and annoyance will arise if a bank at some future time will call on the payee for the return of the money paid to him on the check.[46]

As the transaction in this case had been closed and the principal-agent relationship between the payee and the collecting bank had already ceased, the latter in returning the amount to the drawee bank was already acting on its own and should now be responsible for its own actions. Neither can petitioner be considered to have acted as the representative of the drawee

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[43] UCC § 3-417 (a) on presentment warranties.

[44] *Jai-Alai Corporation v. Bank of the Philippine Islands*, No. L-29432, August 6, 1975, 66 SCRA 29, 34.

[45] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra* note 36, at 164; *Kansas Bankers Surety Company v. Ford County State Bank, supra* note 35, at 536.

[46] *Citizens National Bank v. First National Bank*, 347 So.2d 964, 968 (1977).

bank when it debited respondent's account, because, as already explained, the drawee bank had no right to recover what it paid. Likewise, Far East cannot invoke the warranty of the payee/depositor who indorsed the instrument for collection to shift the burden it brought upon itself. This is precisely because the said indorsement is only for purposes of collection which, under Section 36 of the NIL, is a restrictive indorsement.[47] It did not in any way transfer the title of the instrument to the collecting bank. Far East did not own the draft, it merely presented it for payment. Considering that the warranties of a general indorser as provided in Section 66 of the NIL are based upon a transfer of title and are available only to holders in due course,[48] these warranties did not attach to the indorsement for deposit and collection made by Gold Palace to Far East. Without any legal right to do so, the collecting bank, therefore, could not debit respondent's account for the amount it refunded to the drawee bank.

The foregoing considered, we affirm the ruling of the appellate court to the extent that Far East could not debit the account of Gold Palace, and for doing so, it must return what it had erroneously taken. Far East's remedy under the law is not against Gold Palace but against the drawee-bank or the person responsible for the alteration. That, however, is another issue which we do not find necessary to discuss in this case.

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[47] Section 36 of the NIL reads:

SECTION 36. *When indorsement restrictive*.—An indorsement is restrictive which either:

(a) Prohibits the further negotiation of the instrument; or

(b) *Constitutes the indorsee the agent of the indorser*; or

(c) Vests the title in the indorsee in trust for or to the use of some other persons.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Italics supplied.)

[48] *Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra* note 36; *Kansas Bankers Surety Company v. Ford County State Bank, supra* note 35, at 535.

However, we delete the exemplary damages awarded by the appellate court. Respondents have not shown that they are entitled to moral, temperate or compensatory damages.[49] Neither was petitioner impelled by malice or bad faith in debiting the account of the respondent company and in pursuing its cause.[50] On the contrary, petitioner was honestly convinced of the propriety of the debit. We also delete the award of attorney's fees for, in a plethora of cases, we have ruled that it is not a sound public policy to place a premium on the right to litigate. No damages can be charged to those who exercise such precious right in good faith, even if done erroneously.[51]

WHEREFORE, premises considered, the March 15, 2005 Decision and the May 26, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 71858 are *AFFIRMED WITH THE MODIFICATION* that the award of exemplary damages and attorney's fees is *DELETED*.

SO ORDERED.

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

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[49] Civil Code, Art. 2234.

[50] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 531 (1999).

[51] *Republic v. Lorenzo Shipping Corp.*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 558; *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 524; *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 88 (2002); *Orosa v. Court of Appeals*, 386 Phil. 94, 105 (2000); *"J" Marketing Corporation v. Sia, Jr.*, 349 Phil. 513, 517 (1998).

SECOND DIVISION

[G.R. No. 171863. August 20, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS (Second Division) and GASPAR OLAYON,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610; SECTION 10(A) AND SECTION 5 (B) THEREOF, DISTINGUISHED.— The Informations alleged that respondent, "with lewd designs did willfully, unlawfully, and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age." Section 10 (a) of R.A. No. 7610 under which respondent was charged in each of the two cases provides: SECTION. 10. ***Other Acts*** *of Neglect, Abuse, Cruelty or Exploitation and Other Conditions* ***Prejudicial to the Child's Development***. — (a) Any person who shall commit **any other acts of child abuse,** cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. Section 5 (b), upon the other hand, provides: SEC. 5. ***Child Prostitution and Other Sexual Abuse***. — Children, whether male or female, who for money, profit, or any other consideration or due to the **coercion or influence of any adult,** syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: xxx xxx xxx (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious

conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; As Section 10 refers to acts of *child abuse prejudicial to the child's development* other than *child prostitution and other sexual abuse* under Section 5, attempt to commit child prostitution, child trafficking, attempt to commit child trafficking, and obscene publications and indecent shows, the Court of Appeals did not commit grave abuse of discretion in holding that "x x x 'sexual abuse' [as defined under Section 5] x x x is a completely distinct and separate offense from 'child abuse' [as defined under Section 10]."

2. ID.; ID.; SECTION 5 (B) THEREOF; PUNISHES SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT NOT ONLY WITH A CHILD EXPLOITED IN PROSTITUTION BUT ALSO WITH A CHILD SUBJECTED TO OTHER SEXUAL ABUSE; SEXUAL ABUSE, DEFINED.— Consensual sexual intercourse or even acts of lasciviousness with a minor who is 12 years old or older could constitute a violation of Section 5(b) of R.A. No. 7610. For Section 5(b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, promulgated to implement R.A. No. 7610, defines "sexual abuse" as including "the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children."

3. ID.; ID.; ID.; ELEMENT OF THE OFFENSE.— For *consensual* sexual intercourse or lascivious conduct with a minor, who is not exploited in prostitution, to thus fall within the purview of Section 5(b) of R.A. No. 7610, "persuasion, inducement, enticement or coercion" of the child must be present. In *People v. Larin*, the information alleged that the therein accused took advantage of his authority, influence, and moral ascendancy as trainor/swimming instructor of the minor victim which the Court found constituted "psychological coercion." In convicting the therein accused for lascivious acts, the Court held: It must be noted that [Republic Act No. 7610] covers not only a situation in which a child is abused for profit, but also one in which a child, through **coercion or intimidation**, engages in any lascivious conduct.

> And even in *Malto v. People* wherein the accused was convicted for violation of Section 5(b) of R.A. No. 7610, the information alleged, and the prosecution proved, that the therein accused who was the minor's professor obtained the minor's consent by taking advantage of his relationship and moral ascendancy to exert influence on her. In the case at bar, even if respondent were charged under Section 5(b), instead of Section 10(a), respondent would just the same have been acquitted as there was no allegation that an element of the offense — coercion or influence or intimidation — attended its commission.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Imelda A. Herrera for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The then 22-year old herein respondent Gaspar Olayon was charged with violation of **Section 10(a) of Republic Act No. 7610** (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT) in two separate Informations filed before the Regional Trial Court (RTC) of Pasig City, of which the then 14-year old AAA was alleged to be the victim.

Criminal Case No. 112571 alleged that

> On or about 10:00 a.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.[1] (Underscoring supplied)

[1] Records, p. 1.

Criminal Case No. 112572 alleged that

On or about 2:00 p.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.[2] (Underscoring supplied)

Respondent was also charged for acts of lasciviousness before the RTC of Taguig, docketed **as Criminal Case No. 116350**, of which the same then 14-year old AAA was alleged to be the victim. The case was transferred to the Pasig City RTC and consolidated with Criminal Case Nos. 112571-72.[3] The three cases were jointly tried.[4]

After trial, Branch 158 of the Pasig City RTC, by Decision of January 15, 2002, acquitted respondent in Criminal Case No. 116350 (for acts of lasciviousness).[5] It, however, convicted respondent of violation of Section 10 (a) of Republic Act (R.A.) No. 7610 in Criminal Case Nos. 112571-72 in this wise:

x x x The accused, Olayon admitted his sexual liaisons with [AAA]. His defenses are: 1) [AAA] is his sweetheart and 2) whatever happened to them in terms of these sexual liaisons, occurred with the consent of [AAA]. Although the testimony of [AAA] denies she consented to the sexual liaisons, the evidence did not support it.

The events that occurred on January 27, 1997 at the house of one Duke Espiritu show that [AAA] went with Olayon to that place voluntarily. First, she was fetched from a tricycle stand and it took them another ride to go to the house of Espiritu. If indeed she was forced to board the tricycle, she could have resisted and shouted

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[2] *Id.* at 17.

[3] *Id.* at 292.

[4] *Id.* at 179.

[5] *Id.* at 391-397.

for help considering that there were normally people around in a tricycle stand, waiting for rides. If she indeed resisted and showed any manifestation in this regard, people could have easily helped her in resisting whatever it was Olayon wanted. Second, at the house of Espiritu she could have easily shouted for help since it was located near a road and a pathway. x x x

x x x x x x x x x

Although the sexual liaisons that occurred on January 27, 1997 were with the consent of [AAA] who at that time was only 14 years of age, Olayon cannot escape responsibility because **he took advantage of [AAA's] minority to have these sexual liaisons**, even if they were **with her consent**. Consent is not an accepted defense in this special law. He violated then Republic Act No. 7610, **Section 10(a)** which provides:

> Section 10(a) – Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, shall suffer the penalty of *prision mayor* in its minimum period.
>
> x x x[6] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, Gaspar Olayon *y* Matubis *a.k.a* Eric Ramirez is found guilty beyond reasonable doubt for having violated Republic Act No. 7610, Section 10 (a) in Criminal Case Nos. 112571-72 and is sentenced to suffer in prison the penalty of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months of *prision mayor* for each count. He is acquitted in Criminal Case No. 116350.

Costs against the accused.

SO ORDERED.[7]

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[6] *Id.* at 395-396.

[7] *Id.* at 397.

On appeal by respondent,[8] the Court of Appeals, answering in the negative the issue of whether consensual sexual intercourse with a minor is classified as child abuse under Section 10 of RA No. 7610, **reversed** the trial court's decision and **acquitted** respondent, by Decision[9] of January 13, 2006, reasoning as follows:

"Acts of child abuse" under Section 10 (a) of R.A. 7610 refers to those acts listed under Sec. 3(b) of R.A. 7610, which reads as follows:

Sec. 3. Definition of Terms –

(a) x x x

(b) "Child Abuse" refers to **maltreatment**, whether habitual or not, of the child which includes any of the following:

1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

2) Any act or deeds [*sic*] or words [*sic*] which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Consensual sexual intercourse between OLAY[O]N and [AAA] does not fall under the "sexual abuse" definition [in Section 5 of R.A. No. 7610] which is a completely distinct and separate offense from "child abuse," [under Section 10] because "sexual abuse" pertains to and is associated with "child prostitution" [as defined in Section 5]. **"Sexual abuse" is defined separately under Section 5 of R.A. 7610**, which reads as follows:

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[8] *Id.* at 407.

[9] Penned by Court of Appeals Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., *Rollo*, pp. 33-39.

> Sec. 5. *Child Prostitution and Other Sexual Abuse* – Children, whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

Moreover, for the act of intercourse between OLAY[O]N and [AAA] **to be considered sexual abuse [under Section 5], such intercourse should have occurred due to coercion or intimidation**. In the case at bench, neither coercion nor intimidation were found to have been present, **consent having been freely given**.[10] (Emphasis, italics and underscoring supplied)

Hence, the present petition for *certiorari*[11] of the People under Rule 65, alleging that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction

> x x x IN ACQUITTING RESPONDENT OLAYON OF THE TWO (2) COUNTS OF CHILD ABUSE UNDER SECTION 10(A) OF R.A. 7610 **DESPITE** THE FACT THAT THE **SEXUAL ACTS** COMMITTED BY RESPONDENT OLAYON ON THE MINOR PRIVATE COMPLAINANT ARE CLEARLY **WITHIN THE TERM "OTHER ACTS OF NEGLECT, ABUSE, CRUELTY OR EXPLOITATION AND OTHER CONDITIONS PREJUDICIAL TO THE CHILD'S DEVELOPMENT" DECLARED PUNISHABLE UNDER SECTION 10(A) OF R.A. 7610.**[12] (Emphasis and underscoring supplied)

The record shows that the Pasig City Prosecutor's Office found that the acts of respondent did not amount to rape as they were done with the consent of the 14-year old AAA.[13] Nevertheless, it found the acts constitutive of "violations of

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[10] *Rollo*, pp. 38-39.

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

[12] *Id.* at 16.

[13] Resolution dated June 14, 1997, records, pp. 4-15.

[Republic] Act No. 7610," hence, its filing of the above-quoted Informations for violation of Section 10(a).[14]

The Informations alleged that respondent, "with lewd designs did willfully, unlawfully, and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age."[15]

Section 10(a) of R.A. No. 7610 under which respondent was charged in each of the two cases provides:

SECTION 10. ***Other Acts*** *of Neglect, Abuse, Cruelty or Exploitation and Other Conditions* ***Prejudicial to the Child's Development***. —

(a) Any person who shall commit **any other acts of child abuse**, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Underscoring supplied),

Section 5(b), upon the other hand, provides:

SEC. 5. ***Child Prostitution and Other Sexual Abuse***. — Children, whether male or female, who for money, profit, or any other consideration **or due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years

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[14] *Id.* at 13-14.

[15] *Id.* at 1, 17.

of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; (Italics in the original, emphasis and underscoring supplied)

As Section 10 refers to acts of *child abuse prejudicial to the child's development* other than *child prostitution and other sexual abuse*[16] under Section 5, attempt to commit child prostitution,[17] child trafficking,[18] attempt to commit child trafficking,[19] and obscene publications and indecent shows,[20] the Court of Appeals did not commit grave abuse of discretion in holding that "x x x 'sexual abuse' [as defined under Section 5] x x x is a completely distinct and separate offense from 'child abuse' [as defined under Section 10]."

Consensual sexual intercourse or even acts of lasciviousness with a minor who is 12 years old or older could constitute a violation of Section 5(b) of R.A. No. 7610. For Section 5(b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse.[21]

Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, promulgated to implement R.A. No. 7610, defines "sexual abuse" as including "the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in,

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[16] Section 5, Republic Act No. 7610.

[17] Section 6, Republic Act No. 7610.

[18] *Id.*, Sec. 7.

[19] *Id.*, Sec. 8.

[20] *Id.*, Sec. 9.

[21] *Vide People v. Larin*, 357 Phil. 987, 998 (1998); *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 654-657.

sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children." (Underscoring supplied)

For *consensual* sexual intercourse or lascivious conduct with a minor, who is not exploited in prostitution, to thus fall within the purview of Section 5(b) of R.A. No. 7610, "persuasion, inducement, enticement or coercion" of the child must be present.

In *People v. Larin*,[22] the information alleged that the therein accused took advantage of his authority, influence, and moral ascendancy as trainor/swimming instructor of the minor victim[23] which the Court found constituted "psychological coercion."[24] In convicting the therein accused for lascivious acts, the Court held:

> It must be noted that [Republic Act No. 7610] covers not only a situation in which a child is abused for profit, but also one in which a child, through **coercion or intimidation**, engages in any lascivious conduct.[25] (Emphasis and underscoring supplied)

And even in *Malto v. People*[26] wherein the accused was convicted for violation of Section 5(b) of R.A. No. 7610, the information alleged, and the prosecution proved, that the therein accused who was the minor's professor obtained the minor's consent by taking advantage of his relationship and moral ascendancy to exert influence on her.

In the case at bar, even if respondent were charged under Section 5(b), instead of Section 10(a), respondent would just the same have been acquitted as there was no allegation that an element of the offense – coercion or influence or intimidation – attended its commission.

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[22] *Supra*.

[23] *Id.* at 1000.

[24] *Id.* at 1006-1008.

[25] *Id.* at 998.

[26] *Vide* note 21, *Malto v. People*.

IN LIGHT OF THE FOREGOING disquisition, the petition is *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172267. August 20, 2008]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **ILOILO CITY, as represented by its Mayor, HON. JERRY TREÑAS, ILOILO CITY TREASURER CATHERINE TINGSON, and ROSALINA FRANCISCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; SEC. 267 THEREOF; A DEPOSIT EQUIVALENT TO THE VALUE FOR WHICH THE REAL PROPERTY WAS SOLD PLUS INTEREST IS A JURISDICTIONAL REQUIREMENT THE NONPAYMENT OF WHICH WARRANTS THE FAILURE OF THE ACTION ASSAILING THE VALIDITY OF THE TAX SALE.— The disputed provision on which the spotlight now beams down is rather unsophisticated: Sec. 267. *Action Assailing Validity of Tax Sale*. — xxx. As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action

assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. This is evident from the use of the word "shall" in the first sentence of Section 267. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.

2. ID.; ID.; ID.; ID.; DEPOSIT REQUIREMENT IS NOT A TAX MEASURE.— The deposit requirement, to be sure, is not a tax measure. As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. The deposit, equivalent to the value for which the real property was sold plus interest, is essentially meant to reimburse the purchaser of the amount he had paid at the auction sale should the court declare the sale invalid.

3. ID.; ID.; ID.; ID.; DEPOSIT REQUIREMENT IS NOT APPLICABLE IF THE PLAINTIFF IS THE GOVERNMENT OR ANY OF ITS AGENCIES.— Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is presumed to be solvent, and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. In this case, NHA is indisputably a tax-exempt entity whose exemption covers real property taxes and so its property should not even be subjected to any delinquency sale. Perforce, the bond mandated in Section 267, whose purpose it is to ensure the collection of the tax delinquency should not be required of NHA before it can bring suit assailing the validity of the auction sale.

4. ID.; ID.; ID.; ID.; THE NATIONAL HOUSING AUTHORITY IS EXEMPT FROM REAL PROPERTY TAXES AND THE BOND REQUIREMENT.— Note should be taken that NHA had consistently insisted on the nullity of the proceedings undertaken by respondent Iloilo City which eventually led to the public auction sale of its property. Since, as had been resolved, NHA is liable neither for real property taxes nor for the bond requirement in Section 267, it necessarily follows that any public auction sale involving property owned by NHA

would be null and void and any suit filed by the latter questioning such sale should not be dismissed for failure to pay the bond.

5. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; WHEN PRESENT.— As a final note, a case involving the same defendants and cause of action, docketed as Civil Case No. 22090 before the Regional Trial Court of Iloilo City, Branch 34, had already been previously dismissed for failure to comply with the deposit requirement deemed by the court to be a condition precedent for the filing of that suit. This previous case, however, hardly counts for forum-shopping precisely because it is no longer pending. There is forum-shopping where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending. Furthermore, the order of dismissal was clearly based on a mere technicality. Since no judgment on the merits was rendered after consideration of the evidence or stipulation submitted by the parties at the trial of that case, it falls short of one of the essential requisites of *res judicata* that the judgment be one on the merits.

APPEARANCES OF COUNSEL

Legal Department (NHA) for petitioner.
City Legal Office (Iloilo City) for respondents.

D E C I S I O N

TINGA, *J.*:

The National Housing Authority (NHA) assails the Decision[1] of the Court of Appeals dated 22 March 2006 which declared it not exempt from posting a deposit as a jurisdictional requisite before the court can take cognizance of cases filed by it questioning the validity of a sale of real property at public auction.

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[1] *Rollo*, pp. 6-12; penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

The following undisputed facts are narrated by the appellate court:

On July 19, 2002, the National Housing Authority (NHA, for brevity) filed a Complaint for *"Annulment of the Auction Sale conducted on December 7 & 8, 1998 by the Iloilo City Treasurer and the Subsequent Certificate of Re-Purchase Executed in Favor of a Third Party"* against Iloilo City, as represented by its Mayor Jerry Treñas, Iloilo City Treasurer Catherine Tingson and Rosalina Francisco. The case was subsequently docketed as Civil Case No. 02-27241.

For nonpayment of realty taxes, defendants auctioned off plaintiff NHA's Lot No. 1150-A [of the subdivision plan Psd-29811, being a portion of Lot No. 1150 of the Cadastral Survey of Iloilo, situated at Barangay Monica, City of Iloilo] covered by TCT No. T-76179. Such auction sale was allegedly done without notice to plaintiff NHA as the registered owner thereof, in addition to the fact that the latter is a tax-exempt agency of the government. There being no private individual who offered to bid for the property, the defendant City of Iloilo bought the same per Certificate of Sale under its name. After the one-year redemption period expired, such defendant executed a Final Bill of Sale in its favor. Subsequently, defendant Rosalina Francisco purchased the land. As a result, plaintiff's TCT was cancelled, and a new TCT No. T-107295 was issued in the name of defendant Francisco.

Defendants filed separate Motions to Dismiss based on the same grounds, particularly: lack of jurisdiction and forum shopping. According to them, the lower court did not acquire jurisdiction for failure of plaintiff to comply with the deposit mandated under Section 267, R.A. 7160, to wit:

> Sec. 267. *Acting AssailingValidity of Tax Sale.—No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two (2%) per month from the date of sale to the time of the institution of the action.* The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

Also, defendants asserted that the Complaint violated the non-forum shopping requirement, there being a similar case between the same parties, involving the same subject matter, cause of action and issues, docketed as Civil Case No. 22090 before Branch 34 of Iloilo RTC. In fact, said case has been dismissed on the ground of non-compliance with the deposit requirement under Sec. 267, R.A. 7160, per Order dated July 5, 2002, thus:

> WHEREFORE, Civil Case No. 22090 is hereby dismissed.

Acting favorably upon defendants' Motion to Dismiss, the court *a quo* dismissed plaintiff's Complaint per the herein assailed Order dated February 26, 2004, to wit:

> WHEREFORE, *for failure of the plaintiff National Housing Authority to comply with the afore-quoted provision of Section 267, R.A. 7160, the deposit not being a tax, fee or charge covered by P.D. 2013 and R.A. 7279 and compliance therewith being a condition precedent to take cognizance of said complaint these Motions to Dismiss collectively, is [sic] granted.*
>
> We hereby order that the Dismissal of the complaint dated 05 June 2000 filed with Us on 19 July 2002 is *with prejudice*.[2]

The Court of Appeals affirmed the order of the trial court.

In this Petition for Review on *Certiorari*[3] dated 16 May 2006, NHA asserts that under several statutes—namely Presidential Decree (P.D.) No. 1922, P.D. No. 2013 and Republic Act (R.A.) No. 7279—it is exempt from the payment of any and all fees and taxes of any kind, whether local or general. As such, the provision in Section 267 of R.A. No. 7160 requiring

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

[3] *Id*. at 15-28.

the "taxpayer" to deposit with the court the amount equivalent to the value for which the real property was sold, together with the interest of two percent (2%) per month from the date of sale to the time of institution of the action, before the court may entertain an action assailing the validity of any sale at public auction of real property or rights therein, should allegedly not apply to NHA. Assuming that it is indeed required to make a deposit, NHA avers that a deposit is not necessary in view of the fact that the government is always presumed to be solvent.

In its Comment[4] dated 7 February 2007, respondent Iloilo City maintains that NHA is required to make a deposit as a jurisdictional requisite before the court can assume jurisdiction over the suit. It claims that NHA cannot take refuge in its theory that it is exempt from making a deposit because it is not a taxpayer and is, within the contemplation of the 2nd paragraph of Article 267 of R.A. No. 7160, merely a juridical person having legal interest in the subject property.

Rosalina Francisco, who is impleaded in the petition because she repurchased the subject property from respondent Iloilo City, filed a Comment/Opposition[5] dated 21 February 2007, insisting that NHA's failure to make a deposit rendered its action jurisdictionally infirm.

In its Consolidated Reply[6] dated 26 September 2007, NHA avers that it is not required to make the deposit not only because it is a tax-exempt entity, but more importantly because the government is always presumed to be solvent. It also reiterates the irregularities in the conduct of the delinquency sale, such as the fact that it was not served a copy of the warrant of levy, which allegedly necessitate a review of the case.

There is no doubt that as assiduously pointed out in its petition, NHA is a tax-exempt entity, having been given that status by

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[4] *Id*. at 71-78.

[5] *Id*. at 80-82.

[6] *Id*. at 94-100.

several laws. However, whether its tax-exempt status vests it with immunity as well from the deposit requirement under Section 267 of R.A. No. 7160 is the issue we are faced with in this case.

The disputed provision on which the spotlight now beams down is rather unsophisticated:

> Sec. 267. *Action Assailing Validity of Tax Sale*.—No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
>
> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition—a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code [7] — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. This is evident from the use of the word "shall" in the first sentence of Section 267. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.

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[7] PIMENTEL, AQUILINO, JR., *THE LOCAL GOVERNMENT CODE REVISITED*, 2007 Ed., p. 465.

The deposit requirement, to be sure, is not a tax measure. As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. The deposit, equivalent to the value for which the real property was sold plus interest, is essentially meant to reimburse the purchaser of the amount he had paid at the auction sale should the court declare the sale invalid.

Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is presumed to be solvent,[8] and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. In this case, NHA is indisputably a tax-exempt entity whose exemption covers real property taxes and so its property should not even be subjected to any delinquency sale. Perforce, the bond mandated in Section 267, whose purpose it is to ensure the collection of the tax delinquency should not be required of NHA before it can bring suit assailing the validity of the auction sale.

Note should be taken that NHA had consistently insisted on the nullity of the proceedings undertaken by respondent Iloilo City which eventually led to the public auction sale of its property. Since, as had been resolved, NHA is liable neither for real property taxes nor for the bond requirement in Section 267, it necessarily follows that any public auction sale involving property owned by NHA would be null and void and any suit filed by the latter questioning such sale should not be dismissed for failure to pay the bond.

NHA cannot be declared delinquent in the payment of real property tax obligations which, by reason of its tax-exempt status, cannot even accrue in the first place. Nonetheless, because

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[8] *Sps. Badillo v. Hon. Tayag,* 448 Phil. 606 (2003).

respondent Iloilo City filed a motion to dismiss NHA's Complaint dated 5 June 2002 based on Section 267 and not an answer, it is both proper and prudent to remand the case to the trial court in order to afford respondent Iloilo City full opportunity to be heard on the matters raised in the complaint.

As a final note, a case involving the same defendants and cause of action, docketed as Civil Case No. 22090 before the Regional Trial Court of Iloilo City, Branch 34, had already been previously dismissed for failure to comply with the deposit requirement deemed by the court to be a condition precedent for the filing of that suit.[9] This previous case, however, hardly counts for forum-shopping precisely because it is no longer pending. There is forum-shopping where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending.[10] Furthermore, the order of dismissal was clearly based on a mere technicality. Since no judgment on the merits was rendered after consideration of the evidence or stipulation submitted by the parties at the trial of that case, it falls short of one of the essential requisites of *res judicata* that the judgment be one on the merits.[11]

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals dated 22 March 2006 is *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Regional Trial Court of Iloilo City, Branch 33, which is *DIRECTED* to resume proceedings in Civil Case No. 02-27241 in accordance with this Decision. No pronouncement as to costs.

SO ORDERED.

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

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[9] Records, pp. 23-24; Order dated 5 July 2002.

[10] *City of Caloocan v. Court of Appeals*, G.R. No. 145004, May 3, 2006, 489 SCRA 45, 55.

[11] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, 491 SCRA 222, 230.

SECOND DIVISION

[G.R. No. 172449. August 20, 2008]

LAZARO MADARA, ALFREDO D. ROA III, and JOAQUIN T. VENUS, *petitioners, vs.* **HON. NORMA C. PERELLO, Presiding Judge of Branch 276, Regional Trial Court, Muntinlupa City, FELIX M. FALCOTELO, Sheriff-in-Charge Muntinlupa City, PHILIPPINE AMUSEMENT and GAMING CORPORATION, and PROVIDENT INTERNATIONAL RESOURCES CORPORATION, represented by EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LYDIA J. CHUANICO, DANIEL T. PASCUAL, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY, CELEDONIO P. ESCANO, JR., and the REGISTER OF DEEDS of Muntinlupa City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; EXPLAINED.— Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the expectation that one or the other court would render a favorable disposition. It is the losing party's attempt, other than by appeal or by the special civil action of *certiorari*, to seek a favorable judgment in another forum. By its nature, it is a reprehensible practice that manipulates the court system and abuses its processes; it degrades the administration of justice; and it wastes valuable court resources that can otherwise be used in other priority areas in the dispensation of justice. It is particularly pernicious when it introduces the possibility - because the losing party is asking different courts to rule on the same or related causes and to grant the same or substantially the same reliefs - of conflicting decisions being rendered by different fora on the same issues.

2. ID.; ID.; ID.; WILLFUL AND DELIBERATE VIOLATION OF THE RULE AGAINST FORUM SHOPPING CONSTITUTES DIRECT CONTEMPT.— To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test is whether the two (or more) pending cases have identity of parties, of rights or causes of action, and of the reliefs sought. Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt.

3. ID.; ID.; ID.; PETITION FOR *CERTIORARI* IS NOT COVERED BY THE RULE ON FORUM SHOPPING; EXCEPTION, WHEN APPLICABLE.—We so conclude despite the fact that what the petitioners filed was a petition for *certiorari*, a recourse that - in the usual course and because of its nature and purpose - is not covered by the rule on forum shopping. The exception from the forum shopping rule, however, is true only where a petition for *certiorari* is properly or regularly invoked in the usual course; the exception does not apply when the relief sought, through a petition for *certiorari*, is still pending with or has as yet to be decided by the respondent court, tribunal or body exercising judicial or quasi-judicial body, *e.g.*, a motion for reconsideration of the order assailed *via* a petition for *certiorari* under Rule 65, as in the present case. This conclusion is supported and strengthened by Section 1, Rule 65 of the Revised Rules of Court which provides that the availability of a remedy in the ordinary course of law precludes the filing of a petition for *certiorari*; under this rule, the petition's dismissal is the necessary consequence if recourse to Rule 65 is prematurely taken.

4. ID.; ID.; ID.; PETITION SHALL BE SUMMARILY DISMISSED WHERE THE PARTIES FORUM SHOPPED; CASE AT BAR.— In the required sworn certification attached to the petition for review filed with us, the petitioners stated under oath that they have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals or any other tribunal or agency, or that any such action or proceeding is pending with us, the Court of Appeals, or any other tribunal agency. Additionally, they undertook to report to this Court

the filing of any similar action or proceedings within 5 days from knowledge of such filing. Despite this certification and undertaking, the petitioners never disclosed to this Court the pendency of CA-G.R. SP No. 91950 or any of its material developments; thus, we are left in the dark, up to now, on the status and fate of CA-G.R. SP No. 91950. As far as we know, there are two pending cases dealing with the issues before us - CA-G.R. SP No. 91950 and the present petition. Clearly, therefore, the petitioners forum-shopped when it filed the present petition. They also filed with this Court a false certification of non-forum shopping and blatantly violated as well their undertaking in their sworn certification. **If only for these reasons, the present petition for review must be summarily dismissed.**

5. CIVIL LAW; DAMAGES; PETITIONERS IN CASE AT BAR ARE PERSONALLY LIABLE FOR THE PAYMENT OF DAMAGES AND THE RETURN OF LEASE RENTALS WRONGFULLY REMITTED TO THEM.—We recognized in our ruling in the very recent case of *Provident International Resources Corporation v. Venus* (G.R. No. 167041) promulgated last June 17, 2008, the merits of the RTC decision on the issue of which - between the registered stock and transfer book (STB) of the plaintiff PIRC and the real PIRC's 1979 registered STB - is valid. We note that this recently-decided case is practically between the same parties litigating on opposite sides in the present case. We said in G.R. No. 167041 that the RTC decision effectively upheld the validity of the 1979-registered STB. We similarly recognize - in the context of the present case - the finding in the RTC decision that the members of the real PIRC, and not that of the plaintiff PIRC, are the *bona fide* stockholders and officers of PIRC. This finding, coupled with other factual and legal findings stated in the RTC decision and in this Decision, constitute sufficient basis to hold the petitioners personally and individually liable for the return of PAGCOR's wrongfully remitted lease rentals to, and payment of damages to the members of, the real PIRC.

6. POLITICAL LAW; DUE PROCESS; NO GENUINE ISSUE OF DUE PROCESS ARISES AFTER THE PARTIES HAD OPPORTUNITY TO BE HEARD ON THEIR INDIVIDUAL INTEREST.—The individual petitioners pursued their interest,

not that of the PIRC, in filing the consolidated complaints, although they formally did so under the cover and in the name of the PIRC. Their interests were not only implied from the recitals of the complaints but were expressed as well in the various pleadings they filed, as narrated in the assailed Court of Appeals decision. No genuine issue of due process arises after the petitioners had the opportunity to be heard on their individual interests and after they admitted in their various pleadings that they were the complainants who had initiated the consolidated cases.

APPEARANCES OF COUNSEL

Romeo C. De La Cruz and Associates and *International Legal Advocates* for petitioners.

Bautista Consolacion Gloria Salvosa Apigo Sevilla Noblehas & Siosana for PAGCOR.

Angara Abello Concepcion Regala & Cruz for Provident International Resources Corp.

D E C I S I O N

BRION, *J.*:

Submitted for our decision is the Amended Petition for Review on *Certiorari*[1] of the Decision of the Court of Appeals dated 20 December 2005[2] and its Resolution dated 24 April 2006[3] in **CA-G.R. SP No. 90821,**[4] filed by the petitioners Lazaro Madara

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[1] Pursuant to Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice Lucenito Tagle (retired, now COMELEC Commissioner), with Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Regalado S. Maambong, concurring, *rollo*, pp. 109-129.

[3] *Id.*, pp. 54-60.

[4] *Lazaro Madara, Alfredo D. Roa III and Joaquin T. Venus v. Hon. Norma C. Perello, Presiding Judge of Branch 276, Regional Trial Court, Muntinlupa City, Felix M. Falcotelo, Sheriff-in-Charge Muntinlupa City,*

(*Madara*), Alfredo D. Roa III (*Roa*), and Joaquin T. Venus (*Venus*) [collectively, the *petitioners*].

THE ANTECEDENTS

The amended petition originated from two (2) separate amended complaints *purportedly* filed by Provident International Resources Corporation as plaintiff (***plaintiff PIRC***) with the Regional Trial Court of Muntinlupa City. [As the narration below will show, two groups claim to represent the PIRC; to distinguish between them when necessary, one is herein named the *plaintiff PIRC* while the other is the *real PIRC*.]

The **first amended complaint**, filed on 15 October 2002 and entitled *Provident International Resources Corporation v. Philippine Amusement and Gaming Corp. (PAGCOR), Mr. Efraim Genuino, as Chairman, Mr. Rafael Francisco, as President, JOHN DOES AND JANE DOES*, was docketed as Civil Case No. 02-228.[5] The amended complaint states, among others, that: **(1)** the petitioners Madara, Roa and Venus, as well as Jose Ma. Carlos Zumel and Luis A. Asistio, were elected plaintiff PIRC's directors for the year 2002-2003 and that some of them, as well as a certain Santiago Alvarez (*Alvarez*) who was elected General Manager, were subsequently elected corporate officers; **(2)** despite information to PAGCOR (the lessee of one of the PIRC properties) of the election of the new set of directors and corporate officers, PAGCOR continued to remit its lease rentals to PIRC's *former* corporate officers. The amended complaint asks: **(1)** that PAGCOR be ordered to pay its monthly lease rentals to Roa and/or Alvarez, and/or any of their authorized representatives and no other; and **(2)** for the issuance of a temporary restraining order and a writ of

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Philippine Amusement and Gaming Corporation, and Provident International Resources Corporation, rep. by Edward T. Marcelo, Constancio D. Francisco, Anna Melinda Marcelo-Revilla, Lydia J. Chuanico, Daniel T. Pascual, Linda J. Marcelo, John J. Marcelo, Celia C. Caburnay, Celedonio P. Escaño, Jr., and the Register of Deeds of Muntinlupa City.

[5] *Id.,* pp. 133-144.

preliminary mandatory injunction. Roa, as the President of plaintiff PIRC, verified the complaint while Venus, in his capacity as plaintiff PIRC's Corporate Secretary, signed the Secretary's Certificate attesting to Roa's authority to institute the action.

An **Answer in Intervention**[6] was filed also in the name of PIRC (*real PIRC*) and the herein private respondents Constancio D. Francisco (*Francisco*), Edward T. Marcelo (*Edward Marcelo*), Lydia J. Chuanico (*Chuanico*), Daniel T. Pascual (*Pascual*) and Anna Melinda Marcelo-Revilla (*Marcelo-Revilla*). The pleading essentially states that the private respondents, rather than the petitioners, are the *bona fide* directors and officers of PIRC and that the petitioners, Zumel, Asistio and Valdez are not even stockholders of PIRC – they are mere pretenders who intended to grab power and control of PIRC. The private respondents asked for: **(1)** the denial of the injunctive reliefs asked in the amended complaint; **(2)** the dismissal of the complaint; and **(3)** damages and attorney's fees.

The **second amended complaint,** filed on 5 December 2002, was docketed as Civil Case No. 02-238 and entitled *Provident International Resources Corporation v. Edward T. Marcelo, Constancio D. Francisco, Anna Melinda Marcelo-Revilla, Linda J. Marcelo, John J. Marcelo, Celia C. Caburnay and Celedonio P. Escaño, Jr.*[7] The complaint essentially alleges that: (1) the original incorporators of PIRC – Chuanico, Franciso, Jose A. Lazaro, Edward Marcelo and Pascual – merely held the initial paid-up stockholdings in trust for the real stockholders – the petitioners, Zumel and Asistio; thus, the incorporators at the time of PIRC's incorporation in 1979 executed Deeds of Assignment in blank, Deeds of Transfer in blank, waiver of pre-emptive rights and endorsement in blank of their stock certificates; (2) on 7 August 2002, the blank deeds and transfer documents were completed to effect the transfer to the petitioners, Zumel and Asistio; (3) at a stockholder's meeting, it was agreed

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[6] *Id.,* pp. 145-157.

[7] *Id.,* pp. 158-166.

that the PIRC directors who have not voluntarily resigned shall be considered removed and an election of new directors conducted; at this election, the petitioners, Zumel and Asistio were elected new directors and following an organizational meeting, the new board elected a new set of PIRC officers; (4) despite the election of the new set of PIRC officers, the named defendants continue to unlawfully exercise possession of the PIRC office, misrepresent themselves as directors and officers of PIRC and unlawfully exercise acts on behalf of PIRC; all these malicious acts caused PIRC damage and prejudice.

The second complaint asks for the issuance of a temporary restraining order and a writ of preliminary injunction and/or preliminary mandatory injunction and also a permanent injunction to enjoin the named defendants from acting as directors and officers of PIRC and from taking custody of corporate records. As in the first amended complaint, the complaint was verified by Roa and the Secretary's Certificate attesting to Roa's authority was signed by Venus.

In their **Answer to the Amended Complaint in Civil Case No. 02-238** (*i.e.*, to the second complaint), with **(1)** Motion to Implead the Real PIRC and the Fraudulent Interlopers as Indispensable Parties **(2)** Motion for Preliminary Hearing on Affirmative Defenses and **(3)** Compulsory Counterclaims,[8] the named defendants (except PAGCOR and its officers) in both Civil Case No. 02-228 and Civil Case No. 02-238 maintained that they are the genuine directors and officers of PIRC. The named defendants asked for: **(1)** the addition of the petitioners, Zumel and Asistio as parties-plaintiffs and the **real PIRC** as party-defendant; **(2)** the dismissal of the complaint in Civil Case No. 02-238 after hearing on the affirmative defenses; **(3)** the issuance of a writ of permanent injunction against the petitioners, Zumel and Asistio; and **(4)** that they be ordered to solidarily pay the named defendants and real PIRC moral, exemplary,

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[8] *Id.*, pp. 167-211.

actual and nominal damages, attorney's fees, litigation expenses and treble costs.

The two amended complaints were consolidated and were raffled to Branch 256 of the RTC Muntinlupa City which issued a 20-day temporary restraining order. **PAGCOR complied with the temporary restraining order by remitting the rental to Alvarez. Thereafter, the Presiding Judge of Branch 256 inhibited himself from the case.** The case was thereafter assigned to Branch 276 of the RTC Muntinlupa City (*RTC*) which, in turn, issued the preliminary prohibitory injunction that the private respondents prayed for.[9]

After trial and submission of all relevant evidence in the consolidated cases, the RTC ruled in favor of the intervenors-defendants (the private respondents herein), finding them to be the true and duly constituted members of the board of directors and the duly elected officers of PIRC. The RTC found as well that the petitioners were non-PIRC stockholders and therefore were not qualified for election either as directors or corporate officers. Having therefore no right to receive the lease rentals due from PAGCOR, the RTC ordered the petitioners to jointly return to the **real PIRC** the rental payments for the period covering October 19 to November 18, 2002. The petitioners, as well as Zumel and Asistio, were also ordered to pay the private respondents damages in the amount of ₱5,000,000.00, attorney's fees of ₱500,000,00 and the actual cost of litigation. The dispositive part of the **RTC decision** reads:

> PRESCINDING, the PETITION FOR MANDATORY INJUNCTION is never denied (sic). But the Preliminary Prohibitory Injunction, issued for the INTERVENORS/DEFENDANTS is made permanent, and the Group of plaintiffs directed to permanently desists (sic) and stop from disturbing the operation of the Corporation by the same INTERVENOR/DEFENDANTS, who are found to be the true and duly constituted Officers of the Corporation, legally voted as such Officers and as Members of the Board of Directors. The Civil Complaint against them, Civil Case Nos. 02-238 is hereby dismissed.

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[9] See RTC Decision, *id.*, pp. 212-247; specifically, pp. 215-216, 225.

It has been shown that the Group of Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. never had any right to receive rental from defendant PHILIPPINE AMUSEMENT AND GAMING CORPORATION. This Group of Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. are therefore directed to jointly and unilaterally return to the Corporation the rental payments for the month of October 19 to November 18, 20002, (sic) which they collectively receive, without any right to collect and receive such rental.

Since by reason of this suit it has been shown that the Intervenors/Defendants, being EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, sustained injuries and damages not only to the reputation of the corporation but also personally as officers and members of the Corporation Board, damages is tolled against the Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. which they must pay jointly and unilaterally to the Intervenors/Defendants, being EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, JR. in the sum of FIVE MILLION PESOS (₱5,000,000.00).

Since Intervenors/Defendants EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, JR. were forced to litigate and defend themselves thru counsel, attorney's fees in the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. which they must pay jointly and unilaterally.

The actual cost of this litigation is also tolled against the Group of plaintiffs.

SO ORDERED.[10]

The plaintiff PIRC filed a **Notice of Appeal** on 16 May 2005.[11] The private respondents opposed on the ground that the petitioners had taken a wrong mode of review; under the Interim Rules and Procedures governing intra-corporate controversies, as amended by Resolution *En Banc*, A.M. No. 04-9-07, the party aggrieved by the decision of a commercial/ corporate court has fifteen (15) days from receipt of the decision within which to file a Petition for Review under Rule 43 with the Court of Appeals, not a Notice of Appeal.[12] The private respondents also filed a **Motion to Disregard Notice of Appeal and For Entry of Judgment**[13] and a **Motion for Immediate Issuance of Writ of Execution.**[14] The plaintiff PIRC's response was a **Manifestation, In lieu of Opposition** asking that the RTC consider its Notice of Appeal as withdrawn.[15]

Roa, Madara, Venus and Alvarez, then filed a ***Motion to Admit Petition for Review*** with the attached ***Petition for Review*** dated June 13, 2005[16] with the Court of Appeals. The petition was filed by the petitioners and Santiago Alvarez[17] and was docketed **CA-G.R. SP No. 90147**. *Via* an *Ex-Parte* Manifestation and Motion dated 20 June 2005,[18] they asked the Court of Appeals to consider their petition for review as withdrawn.

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[10] *Id.*, pp. 246-247.

[11] *Id.*, pp. 363-364.

[12] See CA Decision, *id.*, pp. 109-129.

[13] *Id.*, pp. 992-999.

[14] *Id.*, pp. 1000-1007.

[15] *Id.*, pp. 1009-1016.

[16] *Id.*, pp. 365-415.

[17] *Id.*

[18] *Id.*, pp. 416-417.

The petitioners then filed before the trial court a **Petition for Relief from Judgment** dated 28 June 2005,[19] alleging that: **(1)** they were prevented from (a) presenting rebuttal evidence, or at the very least, taking an appeal from the supposed denial of their motion to present rebuttal evidence, (b) filing a memorandum and (c) sufficiently proving their case through fraud, mistake or excusable negligence; and **(2)** they have good and substantial causes of action. They asked: **(1)** for the issuance of a temporary restraining order and/or preliminary injunction; **(2)** the setting aside of the RTC decision dated 23 April 2005; and **(3)** a permanent injunction enjoining the private respondents from acting as directors and officers of PIRC.

In an **Order dated 30 June 2005**[20] that resolved the incidents pending before it (namely, the Notice of Appeal, the Opposition thereto, and private respondents' motion for the immediate issuance of the writ of execution), the RTC ruled that its decision had become final and executory and entry of judgment was in order. The RTC cited as basis the procedural errors the plaintiff PIRC committed in filing a notice of appeal instead of a petition for review, and in later filing a belated petition for review. The RTC also granted the private respondents' motion for the issuance of a writ of execution.

The RTC denied in its **Order dated 1 July 2005** the petition for relief from judgment for deficiency in form and substance.[21]

Meanwhile, in a Resolution promulgated on 19 July 2005, the Court of Appeals granted the petitioners' ***Ex-Parte Manifestation and Motion*** **in CA-G.R. SP No. 90147**, resulting in the withdrawal of the Petition for Review.

On July 19, 2005, the **plaintiff ROA group** filed a ***Very Urgent Motion [To Quash or Recall Writ of Execution]***.[22]

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[19] *Id.*, pp. 248-272.

[20] *Id.*, pp. 1018-1021.

[21] *Id.*, pp. 273-274.

[22] *Id.*, pp. 1079-1084; As stated in the pleading, PIRC's counsel filed the motion in behalf of the ***plaintiff Roa group.***

The petitioners then filed a **Motion for Reconsideration** dated 26 July 2005 of the RTC Order of July 1, 2005.[23]

These RTC incidents were still pending resolution when the petitioners filed on August 10, 2005, a **Petition for *Certiorari***[24] under Rule 65 of the Revised Rules of Court with the Court of Appeals, assailing on the ground of grave abuse of discretion the following orders issued by the RTC and the various notices issued by the sheriff –

a. Decision dated 23 April 2005

b. **Order dated 30 June 2005**

c. Writ of Execution dated 5 July 2005

d. **Order dated 1 July 2005**

e. Notice to Pay dated 7 July 2005

f. Notice of Levy on Execution dated 14 July 2005

g. Notice of Sale on Execution of Real Property dated 14 July 2005

h. Notice to Parties of Sheriff's Auction Sale dated 17 July 2005

The petition was docketed as **CA-G.R. SP No. 90821**. The petition essentially imputed grave abuse of discretion on the public respondents for issuing the assailed orders and notices which were commonly directed towards the enforcement of the RTC decision against the petitioners. The petitioners posited that the enforcement of the RTC decision and of the court's orders and notices against them would violate their right to due process as they were not parties to the case; even assuming that they were parties, they were never notified of the proceedings from beginning to end so that the decision is void as against them.

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[23] *Id.*, pp. 1086-1106.

[24] *Id.*, pp. 275-291.

The private respondents filed an **Urgent Manifestation *Ex Abudanti Ad Cautelam*** and a **Comment** on the petition in **CA-G.R. SP No. 90821**. In their Manifestation, the private respondents alleged that the petitioners committed forum shopping.[25]

While CA-G.R. SP No. 90821 was pending, the RTC denied in an Order dated 31 August 2005[26] **(1)** the petitioners' motion for reconsideration of the 1 July 2005 Order and **(2)** the plaintiff Roa group's Urgent Motion to Quash or Recall Writ of Execution.

On **7 November 2005**, the petitioners in their own and individual capacities[27] filed another **Petition for *Certiorari*** with the Court of Appeals assailing the interrelated **1 July 2005** and **31 August 2005** orders. This petition was docketed **CA-G.R. SP No. 91950**.[28]

Significantly, the petitioner never disclosed – in the present petition before this Court – all these material developments, including the filing of the petition in CA-G.R. SP No. 91950. Only the private respondents informed us of these developments in their Comment on the petition. The petitioners never denied that they filed CA-G.R. SP No. 91950 with the Court of Appeals.

Meanwhile, the Court of Appeals dismissed – *via* the decision assailed in the present petition – the petition in CA-G.R. SP No. 90821 for lack of merit and forum shopping. The Court of Appeals found that even if PIRC had been named as plaintiff in the Civil Cases No. 02-228 and 02-238, the petitioners were the ones actually interested in the lease rentals due from PAGCOR in view of their claim that they were the newly elected directors and officers of PIRC; the petitioners could not deny that they were parties to the consolidated civil cases because

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[25] *Id.*, specifically pp. 109-110.

[26] *Id.*, pp. 1108-1112.

[27] *Id.*, pp. 1114-1323, Petition in CA-G.R. SP No. 91950.

[28] *Id.*

they claimed in their subsequent pleadings with the RTC that they were the plaintiffs who had commenced the consolidated civil cases; thus, they voluntarily submitted themselves to the RTC's jurisdiction and could not claim denial of due process. The forum shopping conclusion, on the other hand, was based on the appellate court's observation that the petition filed before it was the petitioners' fourth attempt to question the RTC decision, and that the petitioners had filed the petition without waiting for the resolution of the motion for reconsideration of the Order dated 1 July 2005 and the urgent motion to quash/ recall writ of execution the petitioners had filed with the RTC.

The petitioners moved to reconsider the Decision,[29] but the Court of Appeals denied the motion in the second order assailed in this petition.

Thereupon, the petitioners filed the present petition, asking us to rule on the following **ISSUES –**

1. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION OR WITHOUT JURISDICTION IN HOLDING PETITIONERS PERSONALLY LIABLE DESPITE THEIR NOT BEING PARTIES TO THE CASE.

2. WHETHER THE COURT OF APPEALS ERRED IN FINDING PETITIONERS GUILTY OF FORUM SHOPPING.

The petitioners argue that they were not parties to the consolidated civil cases and cannot therefore be bound by the decision; their properties cannot likewise be levied in execution. This argument is anchored on the positions that: **(1)** the titles of the consolidated cases do not include them as they were neither plaintiffs nor defendants in these cases; if they were defendants they should have been served with summons; **(2)**

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[29] *Id.,* pp. 305-314.

they never took part in the pre-trial proceedings or in the trial proper; only the PIRC and the private respondents offered their evidence; **(3)** the records will show that nobody ever came forward and appeared as counsel for any of the petitioners; and **(4)** they had no participation in the case except to cause the filing of the consolidated civil cases, which they did as mere representatives.

Additionally, the petitioners argue that the pleadings cited by the Court of Appeals purportedly showing that the petitioners were parties to the consolidated cases were filed after the RTC rendered judgment; this is the natural reaction of persons who, while not parties to the case, were being held liable under the RTC decision. Thus, the filing of these post-judgment pleadings cannot mean that they were parties; a mere claim in a post-judgment pleading that they are parties, which is however negated by the records of the case, is an inconsequential oversight and should not be considered as voluntary submission to the jurisdiction of the court. They also claim denial of due process for being denied the opportunity to be heard – they were not given the chance to file a complaint or answer, to participate in the pre-trial conference and in the trial by submitting evidence. In sum, they claim that the judgment as against them is void.[30]

On forum shopping, the petitioners claim that their motion for reconsideration of the 1 July 2005 Order had been rendered *functus officio* by the successive issuances – the Writ of Execution, Notice to Pay, Notice of Levy on Execution, Notice of Sale on Execution of Real Property, the Notice to Parties of Sheriff's Auction Sale, the Auction Sale and Certificate of Sale – which left them with no recourse but to consider their motion denied for purposes of seeking immediate and adequate reliefs from the Court of Appeals; that, in fact, even after the filing of their petition with the Court of Appeals, the execution of the RTC decision proceeded. All these allegedly show that, to all intents and purposes, there was no more pending motion for reconsideration at the time they sought relief from the Court

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[30] *Id.*, pp. 89-98.

of Appeals; the denial too of the motion for reconsideration on 31 August 2005 was nothing but a mere formality.[31]

OUR RULING

We see no merit in the petition as the appellate court's dismissal of the petition in CA-G.R. SP No. 90821 on the ground of the petitioners' forum shopping is correct. Separately from the forum shopping violation before the Court of Appeals in CA–G.R. SP No. 90821, the petitioners also committed forum shopping and violated their forum shopping certification in seeking relief from this Court. Lastly, on the merits, we see no reversible error in the Court of Appeals' finding that the petitioners were parties to Civil Cases Nos. 02-228 and 02-238 who can be held liable for the RTC's decision in these cases.

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the expectation that one or the other court would render a favorable disposition. It is the losing party's attempt, other than by appeal or by the special civil action of *certiorari*, to seek a favorable judgment in another forum. By its nature, it is a reprehensible practice that manipulates the court system and abuses its processes; it degrades the administration of justice; and it wastes valuable court resources that can otherwise be used in other priority areas in the dispensation of justice.[32] It is particularly pernicious when it introduces the possibility – because the losing party is asking different courts to rule on the same or related causes and to grant the same or substantially the same reliefs - of conflicting decisions being rendered by different fora on the same issues.[33]

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[31] *Id.*, pp. 99-100.

[32] See: ***Spouses Julita dela Cruz v. Pedro Joaquin,*** G.R. No. 162788, July 28, 2005, 464 SCRA 576.

[33] See: ***Top Rate Construction & General Services, Inc. v. Paxton Development Corporation,*** G.R. No. 151081, September 11, 2003, 410 SCRA 604.

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test is whether the two (or more) pending cases have identity of parties, of rights or causes of action, and of the reliefs sought.[34] Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt.[35]

Forum Shopping at the Court of Appeals

We agree with the Court of Appeals that the petitioners indulged in a clear case of forum shopping before it. One of the assailed orders in CA - G.R. SP No. 90821 was the RTC's 1 July 2005 Order. At the time the petition was filed with the appellate court, the RTC had yet to resolve the motion for reconsideration of the 1 July 2005 Order. This is a clear case of forum shopping, as the petitioners sought, at the same time, two separate remedies with two different judicial venues (the RTC and the Court of Appeals), to obtain one and the same relief – the nullification of the RTC decision in Civil Case Nos. 02-228 and 02-238 and its non-enforcement against the individual petitioners.

We so conclude despite the fact that what the petitioners filed was a petition for *certiorari,* a recourse that – in the usual course and because of its nature and purpose – is not covered by the rule on forum shopping. The exception from the forum shopping rule, however, is true only where a petition for *certiorari* is properly or regularly invoked in the usual course; the exception does not apply when the relief sought, through a petition for *certiorari*, is still pending with or has as yet to be decided by the respondent court, tribunal or body exercising

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[34] ***Young v. Seng,*** G.R. No. 143464, March 5, 2003, 398 SCRA 629.

[35] ***Municipality of Taguig v. Court of Appeals,*** G.R. No. 142619, September 13, 2005, 469 SCRA 580; Rule 7, Section 5 of the Revised Rules of Court.

judicial or quasi-judicial body, *e.g.*, a motion for reconsideration of the order assailed *via* a petition for *certiorari* under Rule 65, as in the present case. This conclusion is supported and strengthened by Section 1, Rule 65 of the Revised Rules of Court which provides that the availability of a remedy in the ordinary course of law precludes the filing of a petition for *certiorari*; under this rule, the petition's dismissal is the necessary consequence if recourse to Rule 65 is prematurely taken.

To be sure, the simultaneous remedies the petitioners sought could result in possible conflicting rulings, or at the very least, to complicated situations, between the RTC and the Court of Appeals. An extreme possible result is for the appellate court to confirm that the RTC decision is meritorious, yet the RTC may at the same time reconsider its ruling and recall its order of dismissal. In this eventuality, the result is the affirmation of the decision that the court *a quo* has backtracked on. Other permutations depending on the rulings of the two courts and the timing of these rulings are possible. In every case, our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings. Thus, it matters not that ultimately the Court of Appeals may completely agree with the RTC; what the rule on forum shopping addresses are the possibility and the actuality of its harmful effects on our judicial system.

We find no merit too in petitioners' excuse, offered in the present petition, that there was no pending motion for reconsideration to speak of at the time they sought relief from the Court of Appeals, as their motion had been impliedly but effectively denied by the RTC. This explanation or excuse is significantly weakened by the petitioners' subsequent filing of yet another petition for *certiorari* assailing for the *second time* the 1 July 2005 Order and for the *first time* the related 31 August 2005 Order. While the petitioners claimed effective implied denial of their motion for reconsideration before the RTC to justify their premature petition in CA-G.R. SP No. 90821 and to escape a forum shopping charge, they wasted no time at all in filing another petition in CA-G.R. SP No. 91950

to assail the formal denial of their motion for reconsideration. These varying stances indicate to us that the real standard the petitioners follow is their convenience, not the procedural orderliness that the Rules of Court wish to foster; they disregard the Rules as their convenience dictates. As a result, there were two pending petitions before the Court of Appeals between 7 November 2005 (the date the subsequent CA-G.R. SP No. 91950 was filed) and 20 December 2005 (the date CA-G.R. SP No. 90821 was promulgated) questioning the 1 July 2005 RTC Order and asking for the same reliefs – the nullity of the RTC decision of 23 April 2005 and its non-enforcement against the individual petitioners.

Forum Shopping With this Court

The records before us do not disclose whether the petitioners ever informed the Division of the Court of Appeals handling CA-G.R. SP No. 90821 of the filing of the petition in CA-G.R. SP No. 91950, in light of the requirement that the petitioners in a Rule 65 petition are committed to inform the court of the filing of a similar action or proceeding within 5 days from knowledge of such filing. The petitioners' filing of the second petition before the Court of Appeals is however replete with significance in relation with the present petition before this Court.

In the required sworn certification attached to the petition for review filed with us, the petitioners stated under oath that they have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals or any other tribunal or agency, or that any such action or proceeding is pending with us, the Court of Appeals, or any other tribunal agency. Additionally, they undertook to report to this Court the filing of any similar action or proceedings within 5 days from knowledge of such filing. Despite this certification and undertaking, the petitioners never disclosed to this Court the pendency of CA–G.R. SP No. 91950 or any of its material developments; thus, we are left in the dark, up to now, on the status and fate of CA–G.R. SP No. 91950. As far as we know, there are two pending cases dealing with the issues before us – CA-G.R. SP No. 91950 and the present petition.

Clearly, therefore, the petitioners forum-shopped when it filed the present petition. They also filed with this Court a false certification of non-forum shopping and blatantly violated as well their undertaking in their sworn certification. **If only for these reasons, the present petition for review must be summarily dismissed.**

In light of these reasons, we see no need to discuss at length the other issues the petitioners raised except to say that we see no reversible error, under the unique fact situation of this case, with the Court of Appeals' decision holding the petitioners individually liable under the RTC decision.

(a) The individual petitioners pursued their interests, not that of the PIRC, in filing the consolidated complaints, although they formally did so under the cover and in the name of the PIRC. Their interests were not only implied from the recitals of the complaints but were expressed as well in the various pleadings they filed, as narrated in the assailed Court of Appeals decision. No genuine issue of due process arises after the petitioners had the opportunity to be heard on their individual interests and after they admitted in their various pleadings that they were the complainants who had initiated the consolidated cases.[36]

(b) We additionally note that the petitioners actually misrepresented themselves as stockholders, directors and officers of PIRC – an existing corporation with duly elected directors and officers – and under their assumed capacities as officers of the PIRC filed the amended complaints with the RTC purportedly on PIRC's behalf. To our mind, this clearly indicates the petitioners' design to use the PIRC's separate corporate personality as a shield against any possible or potential personal liability. Interestingly enough, after shielding their individual selves behind the PIRC through misrepresentation, the petitioners now seek refuge from the various provisions of the Rules of Court on the required issuance of summons and notices (precondition

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[36] *Rollo,* pp. 50-55; CA decision, pp. 14-19.

to acquisition of jurisdiction over persons and for persons to be considered parties to a case), with the corresponding right to be heard on their cause. We are not persuaded by the petitioners' claim for protection as their active misrepresentation militates against it; the petitioners cannot now use their own active misrepresentations to shield them from individual liability. The petitioners are now effectively claiming, given their peculiar situation, not a right but an undeserved privilege.

(c) We recognized in our ruling in the very recent case of *Provident International Resources Corporation v. Venus* (G.R. No. 167041) promulgated last June 17, 2008, the merits of the RTC decision on the issue of which – between the registered stock and transfer book (STB) of the plaintiff PIRC and the real PIRC's 1979 registered STB – is valid. We note that this recently-decided case is practically between the same parties litigating on opposite sides in the present case. We said in G.R. No. 167041 that the RTC decision effectively upheld the validity of the 1979-registered STB. We similarly recognize – in the context of the present case – the finding in the RTC decision that the members of the real PIRC, and not that of the plaintiff PIRC, are the *bona fide* stockholders and officers of PIRC. This finding, coupled with other factual and legal findings stated in the RTC decision and in this Decision, constitutes sufficient basis to hold the petitioners personally and individually liable for the return of PAGCOR's wrongfully remitted lease rentals to, and payment of damages to the members of, the real PIRC.

WHEREFORE, premises considered, we hereby *DISMISS* the petition for forum shopping and for lack of merit. Costs against the petitioners.

SO ORDERED.

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

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[*] Designated as additional Member in view of the inhibition of Associate Justice Presbitero J. Velasco, Jr..

THIRD DIVISION

[G.R. No. 172733. August 20, 2008]

SPS. CORNELIO JOEL I. ORDEN and MARIA NYMPHA V. ORDEN, and REGISTER OF DEEDS OF NEGROS ORIENTAL, *petitioners, vs.* **SPS. ARTURO AUREA and MELODIA C. AUREA, SPS. ERNESTO P. COBILE and SUSANA M. COBILE, and FRANKLIN M. QUIJANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL DISTINGUISHED FROM CONTRACT OF SALE.— It is clear from the promissory note that the parties agreed to a conditional sale, the consummation of which is subject to the conditions contained therein - full payment of the purchase price. A contract to sell is akin to a conditional sale, in which the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. The suspensive condition is commonly full payment of the purchase price. One form of conditional sale is what is now popularly termed as a "Contract to Sell," in which ownership or title is retained until the fulfillment of a positive suspensive condition, normally the payment of the purchase price in the manner agreed upon. The distinction between a contract of sale and a contract to sell is well-settled. In a **contract of sale**, the title to the property passes to the vendee upon the delivery of the thing sold; in a **contract to sell**, ownership is, by agreement, reserved to the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a **contract of sale**, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a **contract to sell**, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach

but an event that prevents the obligation of the vendor to convey title from becoming effective. It is thus clear that in a contract to sell, ownership is retained by the seller and is not passed to the buyer until full payment of the price.

2. ID.; ID.; ID.; THE REAL CHARACTER OF THE CONTRACT IS NOT THE TITLE GIVEN BUT THE INTENTION OF THE PARTIES.— In the case at bar, we find that petitioners Orden and respondents Cobile entered into a **contract to sell**. The real character of the contract is not the title given, but the intention of the parties. Although there is a document denominated as "Deed of Absolute Sale," and there is no provision therein of reservation of ownership to the seller, we are persuaded that the true intent of the parties was to transfer the ownership of the properties only upon the buyer's full payment of the purchase price. This is evident from the promissory note executed by respondents Cobile. It is only upon payment of the full purchase price that title to the properties shall be transferred to their names. Furthermore, circumstances show ownership over the properties was never transferred to respondents Cobile. Respondents neither had possession of nor title to the properties. In fact, petitioners Orden, per their letter to respondents Cobile, even gave the latter the chance to pay the balance of the purchase price before they would sell the properties to other interested persons. From the foregoing, it is evident that the true agreement of the parties is for the petitioners Orden to retain ownership over the properties until respondents shall have fully paid the purchase price.

3. ID.; ID.; ID.; CONTRACT TO SELL; PAYMENT OF THE BALANCE OF THE PURCHASE PRICE IS A POSITIVE SUSPENSIVE CONDITION, FAILURE OF WHICH IS NOT A BREACH, BUT AN EVENT THAT PREVENTS THE OBLIGATIONS OF THE SELLER TO CONVEY TITLE FROM ARISING.— Respondents Cobile failed to pay the balance of the purchase price. Such payment is a positive suspensive condition, failure of which is not a breach, serious or otherwise, but an event that prevents the obligation of the seller to convey title from arising. The non-fulfillment by respondents Cobile of their obligation to pay, which is a suspensive condition for the obligation of petitioners Orden to sell and deliver the title

to the properties, rendered the contract to sell ineffective and without force and effect. The parties stand as if the conditional obligation had never existed. *Inasmuch as the suspensive condition did not take place, petitioners Orden cannot be compelled to transfer ownership of the properties to respondents Cobile.*

4. ID.; ID.; ID.; ID.; FROM THE MOMENT THE PARTY FAILED TO COLLECT THE AMOUNT OF THE BALANCE OF THE PURCHASE PRICE, THE CONTRACT BETWEEN THE PARTIES WAS DEEMED *IPSO FACTO* RESCINDED; REMEDY OF RESCISSION DOES NOT APPLY TO A CONTRACT TO SELL.— The trial court further ruled that petitioners Orden should have filed a case for rescission or sent a notarial act of rescission to respondents Cobile when they incurred a delay by failing to pay the balance of the purchase price. Having extra-judicially rescinded their contract with respondents Cobile, such act, according to the trial court, was subject to contest. The trial court is mistaken. Rescission, whether judicially or by notarial act, is not required to be done by petitioners Orden. There can be no rescission of an obligation that is still non-existing, the suspensive condition not having happened. In the case before us, there was no contract to rescind, judicially or by notarial act, because from the moment respondent Cobile failed to pay on time the correct amount of the balance of the purchase price, the contract between the parties was deemed *ipso facto* rescinded. The reason for this is not that petitioners Orden have the power to *rescind* such contract, but because their obligation thereunder did not arise. The remedy of rescission under Article 1191 of the Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them. Such a remedy does not apply to contracts to sell. Neither does the provision of Article 1592 apply to this case because what said article contemplates is a contract of sale.

5. ID.; ID.; ID.; CANCELLATION OF THE CONTRACT TO SELL PROPER WHERE THE BUYER FAILED TO FULLFILL HIS OBLIGATION TO PAY DESPITE NOTICE THEREOF.— In the exercise of the seller's right to automatically cancel the contract to sell, at least a written notice must be sent to the defaulter informing him of the same. The act of petitioners Orden in

notifying respondents Cobile of their intention to sell the properties to other interested persons if respondents failed to pay the balance of the purchase price was sufficient notice for the cancellation or resolution of their contract to sell. Since respondents Cobile failed to fulfill their obligation even after said notice, petitioners were justified in cancelling their contract (to sell) and selling to a buyer who was willing to pay the full purchase price. Hence, we sustain petitioners Orden's action.

6. ID.; ID.; ID.; ID.; ABSENT ANY PROVISION ON FORFEITURE OF PAYMENTS, PARTIAL PAYMENTS MADE BY THE BUYER MUST BE RETURNED TO HIM.— We now go to the partial payments (₱738,596.28) made by respondents Cobile. We decree that said amount be returned to respondents Cobile, there being no provision regarding forfeiture of payments made in any of the documents executed by the parties. We find such action to be just and equitable under the premises. If we rule otherwise, there will be unjust enrichment on the part of petitioners Orden at the expense of respondents Cobile. Interest thereon at the rate of 12% per annum shall also be paid from 30 September 1997 until fully paid.

7. ID.; DAMAGES; PAYMENT OF MORAL DAMAGES AND ATTORNEY'S FEES TO THE PETITIONERS, WARRANTED.— Lest we forget, the source of all the troubles was respondents Cobile's failure to pay the balance of the purchase price. Consequently they are liable for damages. Under the circumstances obtaining in this case, we find it equitable and just to award petitioners Orden moral damages and attorney's fees in the amounts of ₱50,000.00 and ₱20,000.00, respectively. Their claim for litigation expenses is denied for failure to present proof in support thereof. Exemplary damages cannot also be awarded because it was not shown that respondents Cobile acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

APPEARANCES OF COUNSEL

Jose G. Hernando, Jr. for petitioners.

Clumacs Law Consulting & Litigation Offices for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals dated 20 April 2006 in CA-G.R. CV No. 75788 affirming *in toto* the Decision[2] of Branch 33 of the Regional Trial Court (RTC) of Dumaguete City in Civil Case No. 12056. The RTC decision ordered petitioners Sps. Cornelio Joel I. Orden and Maria Nympha V. Orden to return to respondents-spouses Ernesto Cobile and Susana M. Cobile the amount of ₱738,596.28 plus twenty percent interest per annum from the filing of the complaint until fully paid.

The antecedents are as follows:

Petitioners spouses Cornelio Joel I. Orden and Maria Nympha V. Orden are the owners of two parcels of land located at the Municipality of Sibulan, Negros Oriental covered by Transfer Certificate of Title Nos. T-27159 and T-27160, and the residential house standing thereon.

On 29 September 1994, petitioners Orden executed a Deed of Absolute Sale selling, transferring and conveying the aforementioned properties to respondents-spouses Arturo Aurea and Melodia C. Aurea, their heirs, successors and assigns. The Deed of Absolute Sale contained, among others, the following:

> That for and in consideration of the sum of ONE MILLION NINE HUNDRED THOUSAND PESOS (₱1.9M), receipt of which is hereby acknowledged to the satisfaction of the VENDORS, WE, the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, by these present, do hereby SELL, TRANSFER and CONVEY,

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[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring; CA *rollo*, pp. 87-95.

[2] Records, pp. 266-278.

in a manner, absolute, and irrevocable, unto and in favor of herein VENDEES, the spouses ARTURO AUREA and MELODIA C. AUREA, their heirs, successors and assigns, the above-described two (2) parcels of land, together with the residential house standing thereon, and declared under Tax Declaration _____, and assessed at _____.[3]

Simultaneous with the execution of the Deed of Absolute Sale, respondents-spouses Aurea executed a Joint Affidavit whereby they declared that the true and real purchasers of the abovementioned properties described in the Deed of Absolute Sale are respondents-spouses Ernesto P. Cobile and Susana M. Cobile. The pertinent portions of the affidavit read:

> That we are the Vendees in a document denominated "DEED OF ABSOLUTE SALE" from the Vendors, the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, involving two (2) parcels of land under TCT-27159 (Tax Dec. No. 93-2-04-094) and TCT-27160 (Tax Dec. No. 93-2-04-095) and a residential house under Tax Dec. No. _____ for the sum of ONE MILLION NINE HUNDRED THOUSAND PESOS (₱1.9M), per Doc. No. 384; Page No. 78, Book No. _____; Series of 1994, dated September _____, 1994 of Notary Public Atty. Jose G. Hernando, Jr.
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> That the true and real vendees in said "DEED OF ABSOLUTE SALE" adverted to above are one ERNESTO P. COBILE and SUSANA M. COBILE who are both American Citizens and residents of Honolulu, Hawaii, U.S.A.
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> We are executing this Joint Affidavit to prove and show that the real and true purchasers of the afore-mentioned two (2) parcels of land and the residential house sold by the spouses CORNELIO JOEL I. ORDEN are one ERNESTO P. COBILE and SUSANA M. COBILE.[4]

Immediately after the signing of the Deed of Absolute Sale and Joint Affidavit, respondents Cobile paid petitioners Orden the amount of ₱384,000.00 as partial payment of the purchase

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[3] *Id.* at 189-190.

[4] *Id.* at 195.

price of ₱1,900,000.00 as evidenced by a receipt signed by petitioners Orden. The receipt reads:

R E C E I P T

RECEIVED from ERNESTO P. COBILE and SUSANA M. COBILE, the sum of THREE HUNDRED EIGHTY FOUR THOUSAND PESOS (₱384,000.00) representing partial payment of the purchase price re "Deed of Absolute Sale" of two parcels of land and a residential house located at Sibulan, Negros Oriental, Philippines.[5]

Respondents Cobile then executed a document entitled "PROMISSORY" whereby they promised to pay petitioners Orden the amount of ₱566,000.00 on or before 31 October 1994, and the remaining ₱950,000.00 to be paid as soon as the titles of the properties shall have been transferred to them. Said document reads:

PROMISSORY

WE, ERNESTO P. COBILE and SUSANA M. COBILE, residents of Hawaii, U.S.A., by these presents, do hereby promise to pay to the spouses CORNELIO JOEL I. ORDEN and MARIA NYMPHA VELARDO ORDEN, the sum of FIVE HUNDRED SIXTY SIX THOUSAND PESOS (₱566,000.00) on or before October 31, 1994, said amount representing the one-half balance of the purchase price of the sale of two (2) parcels of land and a residential house located at the Municipality of Sibulan, Negros Oriental, per Doc. No. 384; Page No. 78; Book No. IV; Series of 1994 of Notary Public JOSE G. HERNANDO, JR., the remaining balance of NINE HUNDRED FIFTY THOUSAND PESOS (₱950,000.00) to be paid as soon as the titles of the properties subject-matter of the sale shall have been transferred to us.[6]

The Deed of Absolute Sale, Joint Affidavit, receipt for ₱384,000.00 and the promissory note were all prepared by Atty. Jose G. Hernando, Jr., counsel of petitioners Orden. It was the suggestion and advice of Atty. Hernando that respondents

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[5] *Id.* at 196.

[6] *Id.* at 198.

Aurea be indicated as the vendees in the Deed of Absolute Sale in lieu of respondents Cobile. Atty. Hernando explained that respondents Cobile, being American citizens, could not own land in the Philippines.[7] To show true ownership of the properties to be purchased, respondents executed the Joint Affidavit declaring that the real vendees were respondents Cobile.

Respondents Cobile failed to pay the ₱566,000.00 which was due on or before 31 October 1994.

On 13 December 1994, respondents Cobile, through Arturo Aurea, paid petitioners Orden ₱354,596.28 representing partial payment of the purchase price. The same was evidenced by a receipt executed by the petitioners Orden which reads:

RECEIPT

RECEIVED from SPS. ERNESTO P. COBILE and SUSANA M. COBILE, the sum of PESOS: THREE HUNDRED FIFTY FOUR THOUSAND FIVE HUNDRED NINETY SIX & 28/100 (₱354,596.28) representing partial payment of the purchase price re "Deed of Absolute Sale" of two (2) parcels of land and a residential house located at Sibulan, Negros Oriental, per Doc. No. 384; Page No. 78; Book No. IV; Series of 1994 of the notary public JOSE G. HERMANDO, Jr.

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[7] The pertinent provisions of the 1987 Philippine Constitution regarding the acquisition of private lands are the following:

Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Sec. 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

From the foregoing provisions, it is thus clear that a former natural-born Filipino citizen may be a transferee of private lands, subject to limitations provided by law. In the case at bar, Atty. Hernando should have first verified if the Spouses Cobile were former natural-born Filipino citizen before concluding that they cannot own lands in the Philippines. Evidence reveals that the Spouses Cobile declared they were former Filipino citizens. (Records, p. 3.) Said evidence has not been refuted.

Balance after this payment = ₱1,161,403.72[8]

Failing to pay the balance of the purchase price, petitioners Orden wrote respondents Cobile a letter dated 11 March 1995 informing the latter of their intention to dispose of the properties to other interested parties if respondents Cobile did not comply with their promise to pay the remaining balance of the purchase price. Petitioners Orden, however, gave respondents Cobile ten days from receipt of the letter to pay; otherwise, their non-payment shall be construed as refusal on their part and the properties shall be sold to others. The letter reads:

> Please be informed that we have decided to dispose of the property (Lot 1 and 4, Block B of the Consolidation Subdivision Plan, (LRC) Pcs-7321, all located at Barrio Maslog, Sibulan, Negros Oriental, Philippines, entered by Transfer Certificate of Title No. T-27160 and T-272159, respectively) to other [interested] parties, in view of your failure to make good the conditions imposed on the "Deed of Sale" we have executed as vendors, in your favor as vendees, sometime last September 29, 1994.
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> However, if only to give you a chance to fully consummate our transaction, notice is hereby given upon your goodness to pay us the remaining balance of the aforesaid "Deed of Sale" ten (10) days upon receipt of this letter. Your failure to do so within said period shall be constrained (sic) as your refusal and we then shall proceed to dispose of the property.
>
> Rest assured that you will be reimbursed of the advance payments you made, after the properties shall have been sold and after deductions be made concerning damages, attorney's fees, *etc*.[9]

Respondents Cobile did not make any further payment. All in all, they paid petitioners Orden ₱738,596.28 (₱384,000.00 + ₱354,596.28). Petitioners Orden did not transfer the titles to the properties to respondents Cobile.

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[8] *Id.* at 197.

[9] *Id.* at 199.

On 21 May 1996, petitioners sold the properties to Fortunata Adalim Houthuijzen and the titles thereto transferred to her name.[10]

On 30 September 1997, respondents-spouses Aurea and spouses Cobile, and respondent Franklin M. Quijano filed a Complaint before the Regional Trial Court of Dumaguete City for Enforcement of Contract and Damages with a Prayer for a Writ of Preliminary Attachment, Prohibitory Injuction and Restraining Order against petitioners Orden and the Register of Deeds of Negros Oriental. Franklin Quijano was the attorney-in-fact of respondents spouses Aurea and Cobile. The complaint was docketed as Civil Case No. 12056 and was raffled to Branch 44 of said court.

The complaint, among other things, asked the trial court to order petitioners Orden and the Register of Deeds of Negros Oriental for the delivery of the titles to the properties involved in the names of respondents Cobile; in the alternative, if the titles to the properties could not be delivered in respondents Cobile's name, to order petitioners Orden to pay the whole consideration of the sale plus interest of 20% per annum. The restraining order and writ of preliminary injunction were sought to restrain petitioners Orden from selling, transferring, conveying or encumbering the properties involved to other person during the pendency of the case and to prohibit the Register of Deeds of Negros Oriental from recording, registering and transferring the titles to the properties to other persons except to respondents Cobile.

On 29 October 1997, petitioners Orden filed their Answer with Counterclaim.[11] They asked that the complaint be dismissed for lack of cause of action and that the Deed of Absolute Sale be declared rescinded. They likewise ask for damages.

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[10] *Id.* at 200-203.

[11] *Id.* at 26-32.

On 9 September 1998, following the trial court's order to amend the complaint, impleaded therein were spouses Henricus C. Houthuijzen and Fortunata Adalim Houthuijzen, the subsequent purchasers of the subject properties and holders of the titles thereto.[12]

On 23 February 1999, the trial court dismissed the case for lack of interest to prosecute.[13] On 12 March 1999, respondents filed a motion for reconsideration which the trial court granted.[14] Thus, the case was reinstated.[15]

On 13 April 1999, spouses Henricus C. Houthuijzen and Fortunata Adalim Houthuijzen filed their Answer with Motion to Dismiss.[16]

In an Order dated 1 June 1999, the trial court granted the spouses Houthuijzen's motion to dismiss, ruling that said spouses were buyers in good faith who were able to register the sale with the Register of Deeds, and that respondents Cobile's complaint could be enforced only against petitioners Orden.[17]

On 8 July 1999, respondents moved for the reconsideration[18] of the 1 June 1999 Order which the trial court denied for lack of merit.[19]

During the pre-trial conference, the parties agreed only on the identities of the parties and of the subject properties.[20]

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[12] *Id.* at 40-47.

[13] *Id.* at 55.

[14] *Id.* at 56-59.

[15] *Id.* at 65.

[16] *Id.* at 66-70.

[17] *Id.* at 80-81.

[18] *Id.* at 82-109.

[19] *Id.* at 123.

[20] *Id.* at 155.

On 25 April 2000, respondents filed a Motion for Inhibition[21] which was granted by the Presiding Judge of Branch 44. The case was re-raffled to Branch 33. Trial ensued.

In a decision dated 26 April 2002, the trial court disposed of the case as follows:

> ACCORDINGLY, from the foregoing disquisition, judgment is hereby rendered ordering the defendants:
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> (1) to return to plaintiffs, spouses Ernesto Cobile and Susana M. Cobile the amount of SEVEN HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED NINETY-SIX PESOS and TWENTY-EIGHT CENTAVOS (₱738,596.28) representing the total amount advanced by the plaintiffs to defendants; and
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> (2) to pay plaintiffs interest of the aforecited amount at the rate of Twenty (20%) percent per annum from the filing of the complaint until fully paid.[22]

The trial court found that petitioners Orden and respondents Cobile entered into a contract of sale. The contract, it explained, was subject to the conditions laid down in the promissory note – that respondents Cobile would pay the amount of ₱566,000.00 on or before 31 October 1994, and the petitioners Ordens would undertake the transfer of the titles to the properties in the names of respondents Cobile, after which the latter would pay the remaining balance of ₱950,000.00. It said that this was an example of reciprocal obligations. Since respondents Cobile already violated the terms of the promissory note when they failed to pay the total amount of ₱566,000.00 on the agreed date, petitioners Orden should have filed for rescission. This, the trial court said, petitioner Orden failed to do. The letter that petitioners Orden sent to respondents Cobile — informing them that should they fail to comply with the terms and conditions of the promissory note, petitioners Orden would be constrained to sell the properties

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[21] *Id.* at 158-160.

[22] *Id.* at 266-278.

to other interested persons — was not the rescission envisaged by law. The rescission made by petitioners Orden was thus open to contest.

The trial court likewise ruled that the properties subject matter of the case could not be given to respondents Cobile because the ownership thereof had passed to Fortunata Adalim-Houthuijzen whom it regarded as an innocent purchaser for value.

Furthermore, the trial court declared that respondents Cobile could not demand specific performance or rescission of contract, for they themselves failed to comply with the terms and conditions set forth in the promissory note when they failed to pay the entire balance of one-half (₱950,000.00) of the total price agreed upon.

The trial court ruled that it could not in conscience grant respondents Cobile's prayer that should petitioners Orden fail to deliver the titles in respondents Cobile's names, the Ordens be ordered to pay the Cobiles the entire purchase price plus 20% interest per annum. It likewise said that neither could petitioners Orden forfeit the ₱738,596.28 paid by respondents because they had not rescinded the contract of sale between them either judicially or by notarial act.

On 23 May 2002, petitioners Orden filed a Notice of Appeal.[23]

On 20 April 2006, the Court of Appeals rendered its Decision[24] affirming *in toto* the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **AFFIRMING *EN*** (*sic*) ***TOTO*** the decision dated April 26, 2002 of the Regional Trial Court in Civil Case No. 12056.[25]

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[23] *Id.* at 285.

[24] CA *rollo*, pp. 87-95.

[25] *Id.* at 95.

The Court of Appeals justified the return of what had been paid by respondents Cobile (₱738,596.28) on the ground that the deed of sale or promissory note did not contain any provision regarding forfeiture in case the full purchase price was not paid. Moreover, it ruled that petitioners Orden had no just or legal ground to keep the payments made by respondents Cobile because they failed to transfer the titles of the properties in the names of respondents Cobile. To allow petitioners Orden to retain said payments would unjustly enrich them at the expense of respondents Cobile.

On 16 June 2006, petitioners Orden filed before us a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.[26] Per our resolution dated 10 July 2006, we required respondents to comment on the petition within ten days from notice of the resolution.[27]

On 3 October 2006, respondents filed their Comment[28] to which petitioners were directed to file a Reply.[29] The Reply was filed on 7 July 2007.[30]

On 17 September 2007, the Court gave due course to the petition and required the parties to submit their respective memoranda within thirty days from notice.[31] The parties submitted their respective memoranda.[32]

Petitioners argue that the Court of Appeals erred in holding that the case at bar involves a perfected contract of sale and that an action for rescission should have been pursued by them (petitioners).[33] They claimed that what they entered into with

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[26] *Rollo*, pp. 8-14.

[27] *Id.* at 16.

[28] *Id.* at 18-21.

[29] *Id.* at 23.

[30] *Id.* at 27-28.

[31] *Id.* at 30.

[32] *Id.* at 32-45.

[33] *Id.* at 10.

respondents Cobile was a Conditional Contract of Sale. They added that although captioned "Deed of Absolute Sale," the contract is truly one of a conditional sale, if not a contract to sell real property on installments. The full payment of the purchase price as laid down in the promissory note is a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation of the vendor to convey title from acquiring any obligatory force.

In the resolution of this case, what is to be determined is the kind of contract petitioners Orden and respondents Cobile entered into. Did they enter into a Contract of Sale or a Contract to Sell?

Both lower courts ruled that the contract entered into by the parties was a Contract of Sale. On the other hand, petitioners Orden insist that they entered into a Contract to Sell.

In the case at bar, on 29 September 1994, a Deed of Absolute Sale was entered into by respondents Aurea, as vendees, and petitioners Orden, as vendors. Respondents Aurea then executed a Joint Affidavit declaring respondents Cobile as the true and real buyers of the subject properties. Respondent Cobile then executed a promissory note in which they promised to pay petitioners Orden the amount of ₱566,000.00 on or before October 31, 1994, and the remaining ₱950,000.00 to be paid as soon as the titles to the properties shall have been transferred to them.

In order to determine the real nature of the contract entered into by the parties, all three documents, not merely the Deed of Absolute Sale, should be considered. The Joint Affidavit of respondents Aurea and the promissory note signed by respondents Cobile veritably show that the latter are indeed the true purchasers of the subject properties. The contents of the promissory note must be taken into account inasmuch as the true buyer signed said document.

In the promissory note, respondents Cobile obligated themselves to do two things: (1) to pay petitioners Orden the amount of ₱566,000.00 on or before October 31, 1994; and (2) to pay the

remaining ₱950,000.00 as soon as the titles to the properties shall have been transferred to them. From the records of the case, it is without question that respondents Cobile failed to fulfill what they promised. Having failed to fulfill their first obligation, petitioners Orden no longer transferred the titles to the properties to their names. The non-payment, therefore, by respondents Cobile of the balance of one-half of the purchase price triggered all subsequent actions of the parties that eventually led to respondents Cobile filing the complaint for Enforcement of Contract and Damages with a Prayer for a Writ of Preliminary Attachment, Prohibitory Injunction and Restraining Order.

It is clear from the promissory note that the parties agreed to a conditional sale, the consummation of which is subject to the conditions contained therein – full payment of the purchase price.

A contract to sell is akin to a conditional sale, in which the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. The suspensive condition is commonly full payment of the purchase price.[34] One form of conditional sale is what is now popularly termed as a "Contract to Sell," in which ownership or title is retained until the fulfillment of a positive suspensive condition, normally the payment of the purchase price in the manner agreed upon.[35]

The distinction between a contract of sale and a contract to sell is well-settled. In a **contract of sale**, the title to the property passes to the vendee upon the delivery of the thing sold; in a **contract to sell**, ownership is, by agreement, reserved to the

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[34] *Serrano v. Caguiat*, G.R. No. 139173, 28 February 2007, 517 SCRA 57, 64.

[35] *Demafelis v. Court of Appeals*, G.R. No. 152164, 23 November 2007, 538 SCRA 305, 314.

vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a **contract of sale**, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a **contract to sell**, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[36]

It is thus clear that in a contract to sell, ownership is retained by the seller and is not passed to the buyer until full payment of the price.

In the case at bar, we find that petitioners Orden and respondents Cobile entered into a **contract to sell**. The real character of the contract is not the title given, but the intention of the parties.[37] Although there is a document denominated as "Deed of Absolute Sale," and there is no provision therein of reservation of ownership to the seller, we are persuaded that the true intent of the parties was to transfer the ownership of the properties only upon the buyer's full payment of the purchase price. This is evident from the promissory note executed by respondents Cobile. It is only upon payment of the full purchase price that title to the properties shall be transferred to their names. Furthermore, circumstances show ownership over the properties was never transferred to respondents Cobile. Respondents neither had possession of nor title to the properties. In fact, petitioners Orden, per their letter to respondents Cobile, even gave the latter the chance to pay the balance of the purchase price before they would sell the properties to other interested persons. From the foregoing, it is evident that the true agreement of the parties is for the petitioners Orden to retain ownership

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[36] *Torrecampo v. Alindogan, Sr.*, G.R. No. 156405, 28 February 2007, 517 SCRA 84, 88.

[37] *Escueta v. Lim*, G.R. No. 137162, 24 January 2007, 512 SCRA 411, 426.

over the properties until respondents shall have fully paid the purchase price.

Respondents Cobile failed to pay the balance of the purchase price. Such payment is a positive suspensive condition, failure of which is not a breach, serious or otherwise, but an event that prevents the obligation of the seller to convey title from arising.[38] The non-fulfillment by respondents Cobile of their obligation to pay, which is a suspensive condition for the obligation of petitioners Orden to sell and deliver the title to the properties, rendered the contract to sell ineffective and without force and effect.[39] The parties stand as if the conditional obligation had never existed.[40] *Inasmuch as the suspensive condition did not take place, petitioners Orden cannot be compelled to transfer ownership of the properties to respondents Cobile.*

The trial court further ruled that petitioners Orden should have filed a case for rescission or sent a notarial act of rescission to respondents Cobile when they incurred a delay by failing to pay the balance of the purchase price. Having extra-judicially rescinded their contract with respondents Cobile, such act, according to the trial court, was subject to contest.

The trial court is mistaken. Rescission, whether judicially or by notarial act, is not required to be done by petitioners Orden. There can be no rescission of an obligation that is still non-existing, the suspensive condition not having happened.[41] In the case before us, there was no contract to rescind, judicially or by notarial act, because from the moment respondent Cobile failed to pay on time the correct amount of the balance of the purchase price, the contract between the parties was deemed

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[38] *Leaño v. Court of Appeals*, 420 Phil. 836, 846 (2001).

[39] *Agustin v. Court of Appeals*, G.R. No. 84751, 6 June 1990, 186 SCRA 375, 381.

[40] *Padilla v. Spouses Paredes*, 385 Phil. 128, 140-141 (2000).

[41] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, 23 January 2006, 479 SCRA 462, 470.

ipso facto rescinded.[42] The reason for this is not that petitioners Orden have the power to *rescind* such contract, but because their obligation thereunder did not arise. The remedy of rescission under Article 1191[43] of the Civil Code is predicated on a breach of faith by the other party that violates the reciprocity between them. Such a remedy does not apply to contracts to sell.[44] Neither does the provision of Article 1592[45] apply to this case because what said article contemplates is a contract of sale.[46]

In the exercise of the seller's right to automatically cancel the contract to sell, at least a written notice must be sent to the defaulter informing him of the same.[47] The act of petitioners Orden in notifying respondents Cobile of their intention to sell the properties to other interested persons if respondents failed

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[42] *Torralba v. Judge De los Angeles*, 185 Phil. 40, 47 (1980).

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

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

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

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

[44] *Villanueva v. Estate of Gerardo L. Gonzaga*, G.R. No. 157318, 9 August 2006, 498 SCRA 285, 294-295.

[45] Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

[46] *Padilla v. Spouses Paredes*, *supra* note 39 at 142.

[47] *Cheng v. Genato*, 360 Phil. 891, 906 (1998).

to pay the balance of the purchase price was sufficient notice for the cancellation or resolution of their contract to sell. Since respondents Cobile failed to fulfill their obligation even after said notice, petitioners were justified in cancelling their contract (to sell) and selling to a buyer who was willing to pay the full purchase price. Hence, we sustain petitioners Orden's action.

We now go to the partial payments (₱738,596.28) made by respondents Cobile. We decree that said amount be returned to respondents Cobile, there being no provision regarding forfeiture of payments made in any of the documents executed by the parties. We find such action to be just and equitable under the premises. If we rule otherwise, there will be unjust enrichment on the part of petitioners Orden at the expense of respondents Cobile. Interest thereon at the rate of 12% per annum shall also be paid from 30 September 1997 until fully paid.

Lest we forget, the source of all the troubles was respondents Cobile failure to pay the balance of the purchase price. Consequently they are liable for damages. Under the circumstances obtaining in this case, we find it equitable and just to award petitioners Orden moral damages and attorney's fees in the amounts of ₱50,000.00 and ₱20,000.00, respectively. Their claim for litigation expenses is denied for failure to present proof in support thereof. Exemplary damages cannot also be awarded because it was not shown that respondents Cobile acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[48]

WHEREFORE, the decision of the Court of Appeals dated 20 April 2006 in CA-G.R. CV No. 75788 is hereby *MODIFIED* as follows:

(1) Petitioners-spouses Cornelio Joel I. Orden and Maria Nympha V. Orden are ordered to return to respondents-spouses Ernesto P. Cobile and Susana M. Cobile the amount of ₱738,596.28, representing the total amount advanced by the

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[48] Art. 2233, Civil Code.

₱738,596.28, representing the total amount advanced by the latter to the former, with interest at the rate of 12% per annum from 30 September 1997 until fully paid; and

(2) Respondents-spouses Ernesto P. Cobile and Susana M. Cobile are ordered to pay moral damages and attorney's fees in the amounts of ₱50,000.00 and ₱20,000.00, respectively, to petitioners-spouses Cornelio Joel I. Orden and Maria Nympha V. Orden.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173865. August 20, 2008]

FACT-FINDING AND INTELLIGENCE BUREAU, REPRESENTED BY **ATTY. MELCHOR ARTHUR H. CARANDANG, OFFICE OF THE OMBUDSMAN,** *petitioner, vs.* **J. FERNANDO U. CAMPAÑA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE DISCIPLINING AUTHORITY HAS DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF THE PROPER PENALTY.— Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Section 53, Rule IV of the Revised

Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The same rule underlines the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances. In several cases, this Court has mitigated the imposable penalty for humanitarian reasons and considered respondent's length of service in the government and his good faith. In several cases, we refrained from imposing the extreme penalty of dismissal from the service where the erring employee had not been previously charged with an administrative offense. In a catena of cases, this Court has taken into consideration the presence of mitigating circumstances and lowered the penalty of dismissal imposed on respondent.

2. ID.; ID.; ID.; LENGTH OF SERVICE, UNBLEMISHED RECORD AND THE FACT THAT THIS IS THE FIRST OFFENSE OF THE EMPLOYEE CONCERNED MITIGATE THE PENALTY IMPOSED FROM DISMISSAL TO SUSPENSION FROM OFFICE.—In the instant case, we find that the penalty of suspension as reduced by the Court of Appeals is proper under the circumstances. Considering respondent Campaña's length of service of thirty-four (34) years, his unblemished record in the past and the fact that this is his first offense, the mitigation of his penalty from dismissal to the penalty of suspension from office without pay for one (1) year is in accord with law and jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Baldomero S.P. Gatbonton, Jr. for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman assails in this instant Petition for Review on

Certiorari under Rule 45 of the Rules of Court, the Decision[1] dated 27 April 2006 of the Court of Appeals and its Resolution[2] dated 19 July 2006, which denied the separate Motions for Reconsideration filed by the Office of the Solicitor General (OSG) in CA-G.R. SP No. 91934. The Court of Appeals modified the Decision of the Ombudsman in OMB-ADM-0-00-0547.

On 30 June 2000, respondent J. Fernando U. Campaña, Senior Vice President (SVP) of the Government Service Insurance System (GSIS) was criminally[3] and administratively charged[4] by petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman before the Evaluation and Preliminary Investigation Bureau (EPIB) and the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman with violation of Section 3(e)[5] and

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[1] Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. De Leon, concurring. *Rollo,* pp. 45-75.

[2] *Rollo,* p. 76.

[3] The Sandiganbayan in a Resolution dated 14 August 2003 in Criminal Case No. 27474 granted respondent Campaña's Motion to Quash and dismissed the case insofar as he was concerned. (Penned by Associate Justice Teresita Leonardo-de Castro with Associate Justices Diosdado M. Peralta, Francisco H. Villaruz, Jr., and Norberto Y. Geraldez, concurring and Associate Justice Gregory S. Ong, dissenting; *rollo,* pp. 217-228.) .

[4] Respondent's co-accused were: AMALIO A. MALLARI, then Senior Vice President (SVP) General Insurance Group (GIG), now SVP Housing and Real Property Development Group (HRPDG); ALEX M. VALENCERINA, Vice President (VP), Technical Service Group (TSG), GIG; and LETICIA BERNARDO, then Manager, Surety Department, GIG.

[5] Sec. 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

(g)[6] of Republic Act No. 3019, also known as the Anti-Graft and Corrupt Practices Act in OMB-0-00-1135, and with violation of Section 22(b), (p) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987 in OMB-ADM-0-00-0547. It is OMB-ADM-0-00-0547 which is the subject of the instant Petition.

The uncontested factual antecedents leading to the filing of the charges are adequately summarized by the Court of Appeals, thus:

> On October 24, 1997, ECOBEL Land, Inc. (ECOBEL) through its Chairman, Josephine Edralin Boright, applied for a medium term financial facility with the GSIS Finance Group to finance the construction of ECOBEL Tower at 1962 Taft Avenue, Manila. The loan application was denied for the following reasons: insufficiency of collateral, the applicant lacks the needed track record in property development and the loan applied for might prove risky.
>
> Subsequently, ECOBEL re-applied for a two year surety bond with the GSIS to guarantee payment of a Ten Million US Dollar loan to be obtained from a foreign creditor with the Philippine Veterans Bank acting as the obligee. ECOBEL's application was approved in principle "subject to analysis/evaluation of the project and the offered collaterals." After evaluation by the GSIS Bond Reinsurance Treaty Underwriting Committee, the collateral offered was found to be a second mortgage. Accordingly, the Committee informed ECOBEL of the rejection of the collateral offered but requested for additional collateral.
>
> Meanwhile, Alex M. Valencerina (Valencerina), then Vice-President for Marketing and Support Services, GIG, submitted through a

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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.

[6] (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.

Memorandum dated January 27, 1998, ECOBEL's bond application for the evaluation and endorsement by the GSIS Investment Committee (INCOM). In the Memorandum, Valencerina made it appear that the payment guarantee bond is fully secured by reinsurance and real estate collaterals and that the principal was given a limited time to avail of the loan from the funder. In [his] Memorandum addressed to the President/General Manager of the GSIS, Amalio Mallari (Mallari) then Senior [V]ice-President of GSIS, GIG, scribbled his own endorsement by stating "Strong reco. Based on info and collaterals herein stated."

During a meeting on February 17, 1998, a proposal to grant the guarantee payment bond to ECOBEL was presented by Mallari to the INCOM. On March 10, 1998, ECOBEL's application was approved and the GSIS Surety Bond (G(16) GIF Bond No. 029132) was correspondingly issued the following day, March 11, 1998 in favor of ECOBEL with PVB as the obligee. Mrs. Boright signed an indemnity agreement in favor of the GSIS apparently on February 11, 1998 or a month previous to the issuance of the bond. A bill for US$ 165,000.00 as ECOBEL's bond premium for one year was prepared by the GSIS which Mrs. Boright paid with a postdated check. However, Mallari instructed Valencerina to return the check due to the doubtful capability of ECOBEL to obtain foreign funding for its loan but in an apparent change of heart, Mallari rescinded his own instruction.

Meanwhile, Mallari was reassigned to the Housing and Real Property Development Group under Office Order No. 73-98 dated July 27, 1998. Later, Federico Pascual, President and General Manager of GSIS suspended the processing and issuance of guarantee payment bonds.

Thus, Valencerina prepared three cancellation notices for the signature of Mallari, but was told that the ECOBEL surety bond could not be cancelled because it is a "done deal." Valencerina, upon the request of Mallari, signed a Certification dated January 14, 1999, stating that ECOBEL's Surety Bond No. 029132 "is genuine, authentic, valid and binding obligation of GSIS and may be transferred to Bear, Stearns International Ltd., and any of its assignees within the period commencing at the date above. GSIS has no counterclaim, defense or right of set-off with respect to the surety bond provided that DRAWING CONDITIONS have been satisfied."

Another Certification dated March 30, 1998 set forth the "drawing conditions" as follows: (1) presentation of original surety bond to GSIS at its office in Manila or London, together with (2) presentation of a demand payment stating non-payment in full or in part by the Bond Principal; and (3) notification of assignment to GSIS of US Dollar Loan obligations of the Bond Principal."

Mallari prepared an amended certification and presented it to Valencerina for signature but the latter refused to sign it. Instead, he (Valencerina) instructed Atty. Nora M. Saludares of the Underwriting Department to verify the authenticity of the parcels of land submitted as collaterals by ECOBEL. Based on her report, it appears that the realty covered by TCT No. 66289 was spurious.

Valencerina immediately informed Boright that Surety Bond No. 029132 is "invalid and unenforceable" and that FEB TCT Check No. AC00000445, postdated to February 26, 1999 was disregarded by the GSIS. Inspite of the bond cancellation notices, ECOBEL made a drawdown on the loan in the sum of US$9,307,000.00 from Bear and Stearns International Ltd., using the surety bond earlier issued by GSIS. With the drawdown, ECOBEL offered to pay GSIS, through [respondent] Campaña, VP International Operations, General Insurance Group and sole representative of GSIS in London, the surety bond premium in the amount of US$330,004.00.

[Respondent] Campaña was neither furnished with copies nor informed of the cancellation notices. He did not know that the surety bond had already been cancelled. Thus, he accepted ECOBEL's premium payment paid in two (2) cheques: one for US$200,629.00 and another for US$129,375.00. However, the second cheque was for the reinsurance premium payable to Transatlantic. Thus, it was "held in abeyance pending receipt of the cover and debit notes in respect of its (Transatlantic's) 75% share." (Annex "I"). As the cover and debt notes were not forwarded, the said cheque was not actually paid and later became stale.

It was only on May 14, 1999 or after petitioner Campaña accepted ECOBEL's premium payment that Valencerina gave information of the decision of GSIS canceling Surety Bond No. 029132. Petitioner Campaña explained his actions, but GSIS still investigated the incident and forwarded its report to the Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman, which conducted it own fact-finding investigation.

Based on the FFIB's report, a criminal case was filed against [respondent] Campaña, Mallari, Valencerina, and Manager Leticia Bernardo for alleged violation of Sec. 3 (e) and (g) of R.A. 3019, as amended, as well as administrative complaint for alleged gross neglect of duty, inefficiency and incompetence in the performance of official duties.[7]

As can be gathered from the report[8] of petitioner Fact-Finding and Intelligence Bureau, respondent exercised manifest partiality, evident bad faith, or gross negligence by issuing a surety bond to Ecobel Land Incorporated (ECOBEL), which ECOBEL did not deserve; and by entering into a transaction representing GSIS which was grossly disadvantageous to the latter since the issuance of the bond was done without ensuring the authenticity of the title to the collateral posted by ECOBEL, which turned out to be spurious; hence, the government stands to lose US$9,307,000.00 without the chance of recovering the same by way of foreclosing said property.[9] There was, likewise, substantial evidence to show that respondent grossly neglected his duty, and was inefficient and incompetent in the performance of his official duties.

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[7] *Rollo,* pp. 46-52.

[8] Ombudsman *rollo,* pp. 2-17.

[9] The charges in the Complaint-Affidavit, dated 30 June 2000, which was filed by petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman, read:

"The Fact-Finding and Intelligence Bureau (FFIB), Office of the Ombudsman xxx hereby files these criminal and administrative complaints before the Evaluation and Preliminary Investigation Bureau (EPIB), and the Administrative Adjudication Bureau (AAB), respectively, against the following public officials of the Government Service Insurance System (GSIS):

x x x x x x x x x

3. FERNANDO U. CAMPANA, VP, London Representative Office, International Operations, GIG

x x x x x x x x x

- for violation of Section 3 (e) and (g) of Republic Act 3019 in relation to GSIS Policy and Procedural Guidelines Nos. 64-80 and 16076 (VII, VIII and XIII BB), in connection with: (1) giving of unwarranted

After due proceedings, the Office of the Ombudsman rendered a Decision,[10] dated 27 January 2005, in OMB-ADM-0-00-0547, finding respondent liable for gross neglect of duty, inefficiency and incompetence in the performance of official duties. According to the Ombudsman, respondent Campaña represented to third persons that the bond was valid and binding as between GSIS and ECOBEL when in fact no premium was paid. Moreover, the Ombudsman faulted respondent Campaña for accepting the late payments of ECOBEL premium without definitive clearance from his superiors.[11]

Consequently, respondent Campaña was found guilty of gross negligence and inefficiency and incompetence in the performance of official duties. Respondent Campaña was meted the penalty of dismissal from service.[12] On 8 June 2005, the Ombudsman

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benefit advantage or preference by the said GSIS officials to ECOBEL thru manifest partiality, evident bad faith, or gross inexcusable negligence, by issuing to ECOBEL the surety bond at issue to which it does not deserve and thereafter make BEAR STEARNS as obligee without ensuring the existence of a valid and existing agreement between ECOBEL and [Philippine Veterans Bank] PVB; and (2) entering into a transaction representing GSIS which is grossly disadvantageous to the latter since in the issuance of the bond, without ensuring the authenticity of the title of the collateral posted by ECOBEL which turned out to be spurious, the government stands to lose US$ 9,307,000.00 without the chance of recovering the same by way of foreclosing the said property,

-and-

for violation of Sec. 22 (b), (p) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987, for Gross Neglect of Duty, and Inefficiency and Incompetence in the Performance of Official Duties.

[10] Ombudsman *rollo,* pp. 315-346.

[11] *Id.* at 340.

[12] The dispositive portion of the Decision of the Ombudsman, dated 27 January 2005 in OMB-ADM-0-00-0547, reads:

WHEREFORE, consistent with CSC Resolution No. 991936 or the Uniform Rules on Administrative Cases that this Office adheres to and applies in the disposition of administrative complaints, we find the liabilities and the corresponding penalties of the following respondents as follows:

issued an Order,[13] modifying its 27 January 2005 Decision, finding respondent Campaña guilty of grave misconduct and imposing the penalty of dismissal from service.[14]

Respondent Campaña moved for a reconsideration of the 27 January 2005 Decision, as modified by the Ombudsman in his Order dated 8 June 2005. On 1 September 2005, the

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Amalio A. Mallari is found liable for simple neglect of duty, and inefficiency and incompetence for which the penalty of one year suspension without pay is meted, applying Section 55 of the Uniform Rules;

Alex M. Valencerina and Fernando U. Campaña are both found liable for gross neglect of duty, and inefficiency and incompetence in the performance of official duties. Gross neglect of duty being the more serious offense, the penalty of dismissal from the service is hereby imposed.

The corresponding disabilities and accessories to administrative penalties provided for in Sections 57 to 58 of the Uniform Rules on Administrative cases also attaches.

The charges against Leticia Bernardo are dismissed. (*Rollo,* pp. 145-146.)

[13] Ombudsman *rollo,* pp. 347-349.

[14] The Order dated 8 June 2005 modified the dispositive portion of the Decision of the Ombudsman, dated 27 January 2005 in OMB-ADM-0-00-0547, in the following manner:

WHEREFORE, the 27 January 2005 Decision by PIAB-B is hereby APPROVED with the following MODIFICATIONS:

1. Respondents ALEX M. VALENCERINA, AMALIO A. MALLARI, and FERNARDO U. CAMPA[Ñ]A are hereby held GUILTY of GRAVE MISCONDUCT and, thus, meted the penalty of DISMISSAL FROM THE SERVICE, together with all its accessory penalties/disabilities as provided in Sections 57-58 of the Uniform Rules on Administrative Cases;

2. As to respondent LETICIA BERNARDO, the resolution of the instant case is hereby held in abeyance. PAMO is hereby directed to conduct further proceedings against her upon service of the subpoena and copy of the complaint-affidavit on her; and

3. PAMO is also hereby ordered to direct ASP III Louella Mae Oco-Pesquera, by way of subpoena *duces tecum,* to submit certified true copies of the records of Crim. Case No. 27474 relating to the re-evaluation/ reinvestigation previously conducted by her. (*Rollo,* pp. 150-151.)

Ombudsman issued an Order,[15] denying the same. The Ombudsman did not give credit to respondent Campaña's invocation of his length of service to be considered as a mitigating circumstance in his favor. Instead, the Ombudsman deemed respondent Campaña's length of service in conjunction with his membership in the Philippine Bar to be aggravating. It was held that respondent Campaña's technical expertise and legal experience should have prodded him to be more cautious and vigilant in the performance of his official duties.[16]

Thus, respondent Campaña filed with the Court of Appeals a Petition for Review seeking to annul the Decision and Order of the Ombudsman, dated 27 January 2005 and 8 June 2005, respectively.

On 27 April 2006, the Court of Appeals rendered its Decision, affirming the Ombudsman's finding of guilt against respondent Campaña for grave misconduct. The appellate court observed that notwithstanding his lack of participation in the application, approval and issuance of the ECOBEL bond, respondent Campaña proceeded to certify that the bond was valid and binding.[17] It underscored the fact that the GSIS London Representative Office, where respondent Campaña served as Vice-President for International Relations, had no underwriting capacities and was merely a representative office.[18] Such fact could not have escaped the attention and knowledge of respondent Campaña, a high-ranking official of the GSIS. Further, the Court of Appeals faulted respondent Campaña for accepting the belated payment of bond premium notwithstanding the established policy of the GSIS that the same should be paid at the main office in Manila. The Court of Appeals affirmed the conclusion of the Ombudsman that respondent Campaña omitted the necessary care demanded of him under the situation with indifference to the consequences thereof.

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[15] Ombudsman *rollo,* pp. 456-473.

[16] *Id.* at 467.

[17] *Rollo,* p. 67.

[18] *Id.*

However, the Court of Appeals modified the penalty imposed by the Ombudsman. Instead of meting out the most severe penalty of dismissal from service against respondent Campaña, the Court of Appeals took note of his thirty-four (34) years of unblemished record in the government service. For said reason, the Court of Appeals found the penalty of suspension from office without pay for one (1) year as reasonable. It cited Section 16, Rule XIV of the Rules Implementing Book V of Executive Order No. 292, which states that in the determination of penalties to be imposed, mitigating and aggravating circumstances may be considered. In reducing the penalty, the Court of Appeals also alluded to Section 53,[19] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service and deemed respondent Campaña's length of service to be mitigating. The Court of Appeals disposed, thus:

> WHEREFORE, the petition is PARTLY GRANTED. The Decision dated January 27, 2005 of the Preliminary Investigation and Administrative Adjudication Bureau-B as modified by the Honorable Ombudsman on June 8, 2005 finding petitioner guilty of grave misconduct and the September 1, 2005 Order denying his Motion for Reconsideration are AFFIRMED subject to the modification that petitioner is SUSPENDED from office without pay for ONE (1) YEAR.[20]

The Solicitor General and the Ombudsman filed separate Motions for Reconsideration of the aforesaid Decision, which were denied by the Court of Appeals in its Resolution[21] dated

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

The following circumstances shall be appreciated:

x x x x x x x x x

J. Length of service in the government

x x x x x x x x x

L. Other analogous circumstances.

[20] *Rollo,* p. 74.

[21] *Id.* at 76.

19 July 2006. The Court of Appeals maintained that respondent Campaña's unblemished record for more than three decades of government service should mitigate the penalty imposed upon him.

Hence, the instant Petition filed by the Fact-Finding and Intelligence Bureau, Office of the Ombudsman, on the primordial question of the propriety of reducing respondent Campaña's penalty of dismissal to suspension for one (1) year without pay.

We emphasize that this is not the time and place to review respondent Campaña's guilt for the administrative offense charged, as that question has been settled. It is now water under the bridge. It was petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman, which elevated the assailed Decision of the Court of Appeals questioning the reduction of penalty. Verily, what is herein disputed is whether the Court of Appeals correctly mitigated the administrative penalty originally imposed by the Ombudsman.

Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case.[22] Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.[23] The same rule underlines the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances.

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[22] *Gonzales v. Civil Service Commission,* G.R. No. 156253, 15 June 2006, 490 SCRA 741, 749; CSC Memorandum Circular No. 19-99, Rule IV, Section 53 (J) recognizes length of service in the government as a mitigating circumstance.

[23] *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in the Chronolog Time Recorder Machine on Several Dates,* A.M. No. 2005-07-SC, 19 April 2006, 487 SCRA 352, 367.

In several cases,[24] this Court has mitigated the imposable penalty for humanitarian reasons and considered respondent's length of service in the government and his good faith. In several

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[24] In *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division* (A.M. No. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1, 18-19) in which therein respondents were found guilty of dishonesty, the Court, for humanitarian considerations, in addition to various mitigating circumstances in respondents' favor, meted out a penalty of six months' suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty, the court, for humanitarian considerations, took note of various mitigating circumstances in respondents' favor, to wit: (1) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation-letter up to the present; her acknowledgment of her infractions and feelings of remorse; her retirement on 31 May 2005; and her family circumstances (*i.e.*, support of a 73-year-old maiden aunt and a 7-year-old adopted girl); and (2) for ELIZABETH L. TING: her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse; the importance and complexity of the nature of her duties (*i.e.*, the preparation of the drafts of the Minutes of the Agenda); the fact that she stayed well beyond office hours in order to finish her duties; and her Performance Rating had always been "Very Satisfactory" and her total score of 42 points was the highest among the employees of the Third Division of the Court.

In *Concerned Taxpayer v. Doblada, Jr.* (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218, 222-223), the penalty of dismissal was reduced by the Court to six months suspension without pay for the attendant equitable and humanitarian considerations therein: Norberto V. Doblada, Jr. had spent 34 years of his life in government service and he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr. and his wife were suffering from various illnesses that required constant medication, and they were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In *Buntag v. Paña* (G.R. No. 145564, 24 March 2006, 485 SCRA 302, 307), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's length of service in the government and the fact that this was her first infraction. Thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one year suspension.

cases, we refrained from imposing the extreme penalty of dismissal from the service where the erring employee had not been previously charged with an administrative offense.[25] In a catena[26] of cases, this Court has taken into consideration the presence of mitigating circumstances and lowered the penalty of dismissal imposed on respondent.[27]

In *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semester of 2003 by the Following Employees of this Court: Gerardo H. Alumbro,* (469 Phil. 534, 547 [2004]), Susan Belando, Human Resource Management Assistant of the Employees Welfare and Benefit Division, OCA, was found to be habitually tardy for the third time. A strict application of the rules would have justified her dismissal from the service. However, for humanitarian reasons, she was only meted the penalty of suspension for 30 days with a warning that she would be dismissed from the service if she would commit the same offense in the future. She, subsequently, incurred habitual tardiness for the fourth time. However, again, for humanitarian reasons, the Court found the penalty of suspension for three months without pay to be appropriate.

[25] *Concerned Employee v. Valentin,* A.M. No. 2005-01-SC, 8 June 2005, 459 SCRA 307, 311-312.

[26] See *Civil Service Commission v. Cortez,* G.R. No. 155732, 3 June 2004, 430 SCRA 593, 604, citing *Marasigan v. Buena*, 348 Phil. 1 (1998); *Office of the Court Administrator v. Ibay*, 441 Phil. 474, 479 (2002); *Office of the Court Administrator v. Sirios*, 457 Phil. 42, 48-49 (2003).

[27] The Court in *Buntag v. Paña, supra* note 24, enumerated recent cases in which the Court took into consideration the mitigating circumstances present and reduced the imposable penalty of dismissal to suspension from service, to wit:

In *Civil Service Commission v. Belagan* (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), the respondent, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, given the respondent's length of service, unblemished record in the past and numerous awards.

In *Vidallon-Magtolis v. Salud* (A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469-470), a CA personnel was found guilty of inefficiency and gross misconduct, punishable by dismissal from the service even for the first offense. However, considering that the respondent had not been previously charged or administratively sanctioned, the Court reduced the penalty and imposed the penalty of suspension for one year and six months.

In the instant case, we find that the penalty of suspension as reduced by the Court of Appeals is proper under the circumstances. Considering respondent Campaña's length of service of thirty-four (34) years, his unblemished record in the past and the fact that this is his first offense, the mitigation of his penalty from dismissal to the penalty of suspension from office without pay for one (1) year is in accord with law and jurisprudence.

WHEREFORE, the instant Petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 91934, dated 27 April 2006 and its Resolution, dated 19 July 2006 are *AFFIRMED*. No costs.

SO ORDERED.

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

In *De Guzman, Jr. v. Mendoza* (A.M. No. P-03-1693, 17 March 2005, 453 SCRA 565, 574), the respondent sheriff was charged with conniving with another in causing the issuance of an *alias* writ of execution and profiting from the rentals collected from the tenants of the subject property. The respondent was subsequently found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was respondent's first offense.

[*] Justice Conchita Carpio Morales was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 14 November 2007.

THIRD DIVISION

[G.R. No. 176405. August 20, 2008]

LEO WEE, *petitioner, vs.* **GEORGE DE CASTRO (on his behalf and as attorney-in-fact of ANNIE DE CASTRO and FELOMINA UBAN) and MARTINIANA DE CASTRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; *KATARUNGANG PAMBARANGAY* LAW; PARTIES ARE REQUIRED TO UNDERGO CONCILIATION PROCESS BEFORE THE LUPON CHAIRMAN AS A PRECONDITION TO FILING A COMPLAINT IN COURT SUBJECT TO CERTAIN EXCEPTIONS.— The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the *barangay* courts which, according to the one who conceived of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character; and to make it truly effective, it should also be compulsory. With this primary objective of the *barangay* justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508 (*Katarungang Pambarangay* Law), which would be better served if an out-of-court settlement of the case is reached voluntarily by the parties. To ensure this objective, Section 6 of Presidential Decree No. 1508 requires the parties to undergo a conciliation process before the *Lupon Chairman* or the *Pangkat ng Tagapagkasundo* as a precondition to filing a complaint in court subject to certain exceptions. The said section has been declared compulsory in nature.

2. ID.; ID.; PRIOR CONCILIATION REQUIREMENT SUFFICIENTLY COMPLIED WITH IN CASE AT BAR.— While it is true that the Certification to file action dated 18 January 2002 of the *Barangay Lupon* refers only to rental increase and not to the ejectment of petitioner from the subject property, the submission of the same for conciliation before the *Barangay Lupon*

constitutes sufficient compliance with the provisions of the *Katarungang Pambarangay* Law. Given the particular circumstances of the case at bar, the conciliation proceedings for the amount of monthly rental should logically and reasonably include also the matter of the possession of the property subject of the rental, the lease agreement, and the violation of the terms thereof.

3. CIVIL LAW; SPECIAL CONTRACTS; LEASE; CONTRACT OF LEASE; WHERE THE PARTIES DID NOT STIPULATE A FIXED PERIOD, IT IS UNDERSTOOD TO BE FROM MONTH TO MONTH, IF THE RENT AGREED UPON IS MONTHLY; THE LESSOR HAS EVERY RIGHT TO DEMAND THE EJECTMENT OF THE LESSEE AT THE END OF EACH MONTH, THE CONTRACT HAVING EXPIRED BY OPERATION OF LAW.— The contract of lease between the parties did not stipulate a fixed period. Hence, the parties agreed to the payment of rentals on a monthly basis. On this score, Article 1687 of the Civil Code provides: xxx. The rentals being paid monthly, the period of such lease is deemed terminated at the end of each month. Thus, respondents have every right to demand the ejectment of petitioners at the end of each month, the contract having expired by operation of law. Without a lease contract, petitioner has no right of possession to the subject property and must vacate the same. Respondents, thus, should be allowed to resort to an action for ejectment before the MTC to recover possession of the subject property from petitioner.

4. ID.; ID.; ID.; ID.; THE LESSOR MAY ASK FOR RESCISSION OF THE CONTRACT OF LEASE WHERE THE LESSEE REFUSED TO PAY THE RENTAL INCREASE AGREED UPON BY BOTH PARTIES.— Corollarily, petitioner's ejectment, in this case, is only the reasonable consequence of his unrelenting refusal to comply with the respondents' demand for the payment of rental increase agreed upon by both parties. Verily, the lessor's right to rescind the contract of lease for non-payment of the demanded increased rental was recognized by this Court in *Chua v. Victorio*: The right of rescission is statutorily recognized in reciprocal obligations, such as contracts of lease. In addition to the general remedy of rescission granted under Article 1191 of the Civil Code, there is an independent provision granting the remedy of rescission for breach of any of the lessor or

lessee's statutory obligations. Under Article 1659 of the Civil Code, the aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force. **Payment of the rent is one of a lessee's statutory obligations, and, upon non-payment by petitioners of the increased rental in September 1994, the lessor acquired the right to avail of any of the three remedies outlined above.**

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; ANY ONE OF THE CO-OWNERS MAY BRING AN ACTION FOR THE RECOVERY OF CO-OWNED PROPERTIES.— Article 487 of the New Civil Code is explicit on this point: ART. 487. Any one of the co-owners may bring an action in ejectment. This article covers all kinds of action for the recovery of possession, *i.e.*, forcible entry and unlawful detainer (*accion interdictal*), recovery of possession (*accion publiciana*), and recovery of ownership (*accion de reivindicacion*). As explained by the renowned civilist, Professor Arturo M. Tolentino: **A co-owner may bring such an action, 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.** If the action is for the benefit of the plaintiff alone, such that he claims possession for himself and not for the co-ownership, the action will not prosper. In the more recent case of *Carandang v. Heirs of De Guzman*, this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus: In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.

6. ID.; ACTIONS; VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING REQUIREMENT; THE EXECUTION OF THE CERTIFICATION AGAINST FORUM SHOPPING BY THE ATTORNEY-IN-FACT, PURSUANT TO A SPECIAL POWER OF ATTORNEY, IS NOT A VIOLATION OF THE REQUIREMENT THAT THE PARTIES MUST PERSONALLY SIGN THE SAME.— Moreover, respondents Annie de Castro and Felomina de Castro Uban each executed a Special Power of Attorney, giving respondent George de Castro the authority to initiate Civil Case No. 1990. A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney, and this is clearly indicated by the fact that it has also been called a "letter of attorney." Even then, the Court views the SPAs as mere surplusage, such that the lack thereof does not in any way affect the validity of the action for ejectment instituted by respondent George de Castro. This also disposes of petitioner's contention that respondent George de Castro lacked the authority to sign the Verification and the Certificate of Non-Forum Shopping. As the Court ruled in *Mendoza v. Coronel*: **We likewise hold that the execution of the certification against forum shopping by the attorney-in-fact in the case at bar is not a violation of the requirement that the parties must personally sign the same.** The attorney-in-fact, who has authority to file, and who actually filed the complaint as the representative of the plaintiff co-owner, pursuant to a Special Power of Attorney, is a party to the ejectment suit. In fact, Section 1, Rule 70 of the Rules of Court includes the representative of the owner in an ejectment suit as one of the parties authorized to institute the proceedings. Failure by respondent George de Castro to attach the said SPAs to the Complaint is innocuous, since it is undisputed that he was granted by his sisters the authority to file the action for ejectment against petitioner prior to the institution of Civil Case No. 1990. The SPAs in his favor were respectively executed by respondents Annie de Castro and Felomina de Castro Uban on **7 February 2002** and **14 March 2002;** while Civil Case No. 1990 was filed by respondent George de Castro on his own behalf and on behalf of his siblings only

on **1 July 2002,** or way after he was given by his siblings the authority to file said action.

7. ID.; ID.; ID.; PERSONAL SIGNING THEREOF DEEMED SUBSTANTIALLY COMPLIED WITH WHEN TWO OUT OF SEVERAL REAL PARTIES-IN-INTEREST, WHO HAVE SUFFICIENT KNOWLEDGE AND BELIEF TO SWEAR TO THE TRUTH OF THE ALLEGATIONS IN THE PETITION, SIGNED THE VERIFICATION ATTACHED TO IT.— Respondent deceased Jesus de Castro's failure to sign the Verification and Certificate of Non-Forum Shopping may be excused since he already executed an Affidavit with respondent George de Castro that he had personal knowledge of the filing of Civil Case No. 1990. In *Torres v. Specialized Packaging Development Corporation,* the Court ruled that the personal signing of the verification requirement was deemed substantially complied with when, as in the instant case, two out of 25 real parties-in-interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it.

8. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; NON-USE OF THE PHRASE "UNLAWFULLY WITHHOLDING" NOT FATAL; ALLEGATION THAT THE DEFENDANT IS UNLAWFULLY WITHHOLDING POSSESSION FROM THE PLAINTIFF IS SUFFICIENT.— In the same vein, this Court is not persuaded by petitioner's assertion that respondents' failure to allege the jurisdictional fact that there was "unlawful withholding" of the subject property was fatal to their cause of action. It is apodictic that what determines the nature of an action as well as which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought. In an unlawful detainer case, the defendant's possession was originally lawful but ceased to be so upon the expiration of his right to possess. Hence, the phrase "unlawful withholding" has been held to imply possession on the part of defendant, which was legal in the beginning, having no other source than a contract, express or implied, and which later expired as a right and is being withheld by defendant. In *Barba v. Court of Appeals,* the Court held that although the phrase "unlawfully withholding" was not actually used by therein petitioner in her complaint, the Court

held that her allegations, nonetheless, amounted to an unlawful withholding of the subject property by therein private respondents, because they continuously refused to vacate the premises even after notice and demand. In the Petition at bar, respondents alleged in their Complaint that they are the registered owners of the subject property; the subject property was being occupied by the petitioner pursuant to a monthly lease contract; petitioner refused to accede to respondents' demand for rental increase; the respondents sent petitioner a letter terminating the lease agreement and demanding that petitioner vacate and turn over the possession of the subject property to respondents; and despite such demand, petitioner failed to surrender the subject property to respondents. The Complaint sufficiently alleges the unlawful withholding of the subject property by petitioner, constitutive of unlawful detainer, although the exact words "unlawful withholding" were not used. In an action for unlawful detainer, an allegation that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient, without necessarily employing the terminology of the law.

9. ID.; RULES OF PROCEDURE; WHERE A RIGID APPLICATION OF THE RULES WILL RESULT IN A MANIFEST FAILURE OR MISCARRIAGE OF JUSTICE, TECHNICALITIES SHOULD BE DISREGARDED IN ORDER TO RESOLVE THE CASE.— Petitioner's averment that the Court of Appeals should have dismissed respondents' Petition in light of the failure of their counsel to attach the Official Receipt of his updated payment of Integrated Bar of the Philippines (IBP) dues is now moot and academic, since respondents' counsel has already duly complied therewith. It must be stressed that judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities. Where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case.

APPEARANCES OF COUNSEL

Millora & Maningding Law Offices for petitioner.
Ireneo B. Orlino for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Leo Wee, seeking the reversal and setting aside of the Decision[2] dated 19 September 2006 and the Resolution[3] dated 25 January 2007 of the Court of Appeals in CA-G.R. SP No. 90906. The appellate court, in its assailed Decision, reversed the dismissal of Civil Case. No. 1990, an action for ejectment instituted by respondent George de Castro, on his own behalf and on behalf of Annie de Castro, Felomina de Castro Uban and Jesus de Castro[4] against petitioner, by the Municipal Trial Court (MTC) of Alaminos City, which was affirmed by the Regional Trial Court (RTC), Branch 54, Alaminos City, Pangasinan; and, ruling in favor of the respondents, ordered the petitioner to vacate the subject property. In its assailed Resolution dated 25 January 2007, the Court of Appeals refused to reconsider its earlier Decision of 19 September 2006.

In their Complaint[5] filed on 1 July 2002 with the MTC of Alaminos City, docketed as Civil Case No. 1990, respondents alleged that they are the registered owners of the subject property, a two-storey building erected on a parcel of land registered under Transfer Certificate of Title (TCT) No. 16193 in the Registry of Deeds of Pangasinan, described and bounded as follows:

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[1] *Rollo,* pp. 1-25.

[2] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Renato C. Dacudao and Rosmari D. Carandang, concurring; *rollo,* pp. 27-36.

[3] *Rollo,* p. 38.

[4] During the proceedings, respondent Jesus de Castro died and was substituted in this action by his widow, Martiniana de Castro.

[5] *Rollo,* pp. 39-44.

A parcel of land (Lot 13033-D-2, Psd-01550-022319, being a portion of Lot 13033-D, Psd-018529, LRC Rec. No. ____) situated in Pob., Alaminos City; bounded on the NW. along line 1-2 by Lot 13035-D-1 of the subdivision plan; on the NE. along line 2-3 by Vericiano St.; on the SE. along line 3-4 by Lot 13033-D-2 of the subdivision plan; on the SW. along line 4-1 by Lot 575, Numeriano Rabago. It is coverd by TCT No. 16193 of the Register of Deeds of Pangasinan (Alaminos City) and declared for taxation purposes per T.D. No. 2075, and assessed in the sum of ₱93,400.00.[6]

Respondents rented out the subject property to petitioner on a month to month basis for ₱9,000.00 per month.[7] Both parties agreed that effective 1 October 2001, the rental payment shall be increased from ₱9,000.00 to ₱15,000.00. Petitioner, however, failed or refused to pay the corresponding increase on rent when his rental obligation for the month of 1 October 2001 became due. The rental dispute was brought to the *Lupon Tagapagpamayapa* of Poblacion, Alaminos, Pangasinan, in an attempt to amicably settle the matter but the parties failed to reach an agreement, resulting in the issuance by the *Barangay Lupon* of a Certification to file action in court on 18 January 2002. On 10 June 2002, respondent George de Castro sent a letter to petitioner terminating their lease agreement and demanding that the latter vacate and turn over the subject property to respondents. Since petitioner stubbornly refused to comply with said demand letter, respondent George de Castro, together with his siblings and co-respondents, Annie de Castro, Felomina de Castro Uban and Jesus de Castro, filed the Complaint for ejectment before the MTC.

It must be noted, at this point, that although the Complaint stated that it was being filed by all of the respondents, the Verification and the Certificate of Non-Forum Shopping were signed by respondent George de Castro alone. He would subsequently attach to his position paper filed before the MTC

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[6] CA *rollo,* pp. 33-34.

[7] The records do not show when the lease agreement started.

on 28 October 2002 the Special Powers of Attorney (SPAs) executed by his sisters Annie de Castro and Felomina de Castro Uban dated 7 February 2002 and 14 March 2002 respectively, authorizing him to institute the ejectment case against petitioner.

Petitioner, on the other hand, countered that there was no agreement between the parties to increase the monthly rentals and respondents' demand for an increase was exorbitant. The agreed monthly rental was only for the amount of ₱9,000.00 and he was religiously paying the same every month. Petitioner then argued that respondents failed to comply with the jurisdictional requirement of conciliation before the *Barangay Lupon* prior to the filing of Civil Case. No. 1990, meriting the dismissal of their Complaint therein. The Certification to file action issued by the *Barangay Lupon* appended to the respondents' Complaint merely referred to the issue of rental increase and not the matter of ejectment. Petitioner asserted further that the MTC lacked jurisdiction over the ejectment suit, since respondents' Complaint was devoid of any allegation that there was an "unlawful withholding" of the subject property by the petitioner.[8]

During the Pre-Trial Conference[9] held before the MTC, the parties stipulated that in May 2002, petitioner tendered to respondents the sum of ₱9,000.00 as rental payment for the month of January 2002; petitioner paid rentals for the months of October 2001 to January 2002 but only in the amount of ₱9,000.00 per month; respondents, thru counsel, sent a letter to petitioner on 10 June 2002 terminating their lease agreement which petitioner ignored; and the *Barangay Lupon* did issue a Certification to file action after the parties failed to reach an agreement before it.

After the submission of the parties of their respective Position Papers, the MTC, on 21 November 2002, rendered a Decision[10]

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[8] *Rollo,* p. 47.

[9] *Id.*

[10] CA *rollo,* pp. 33-42.

dismissing respondents' Complaint in Civil Case No. 1990 for failure to comply with the prior conciliation requirement before the *Barangay Lupon.* The decretal portion of the MTC Decision reads:

> WHEREFORE, premised considered, judgment is hereby rendered ordering the dismissal of this case. Costs against the [herein respondents].

On appeal, docketed as Civil Case No. A-2835, the RTC of Alaminos, Pangasinan, Branch 54, promulgated its Decision[11] dated 27 June 2005 affirming the dismissal of respondents' Complaint for ejectment after finding that the appealed MTC Decision was based on facts and law on the matter. The RTC declared that since the original agreement entered into by the parties was for petitioner to pay only the sum of ₱9.000.00 per month for the rent of the subject property, and no concession was reached by the parties to increase such amount to ₱15.000.00, petitioner cannot be faulted for paying only the originally agreed upon monthly rentals. Adopting petitioner's position, the RTC declared that respondents' failure to refer the matter to the *Barangay* court for conciliation process barred the ejectment case, conciliation before the *Lupon* being a condition *sine qua non* in the filing of ejectment suits. The RTC likewise agreed with petitioner in ruling that the allegation in the Complaint was flawed, since respondents failed to allege that there was an "unlawful withholding" of possession of the subject property, taking out Civil Case No. 1990 from the purview of an action for unlawful detainer. Finally, the RTC decreed that respondents' Complaint failed to comply with the rule that a co-owner could not maintain an action without joining all the other co-owners. Thus, according to the dispositive portion of the RTC Decision:

> WHEREFORE the appellate Court finds no cogent reason to disturb the findings of the court *a quo*. The Decision dated November 21, 2002 appealed from is hereby AFFIRMED *IN TOTO*.[12]

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[11] *Rollo,* pp. 46-49.

[12] *Id.* at 49.

Undaunted, respondents filed a Petition for Review on *Certiorari*[13] with the Court of Appeals where it was docketed as CA-G.R. SP No. 90906. Respondents argued in their Petition that the RTC gravely erred in ruling that their failure to comply with the conciliation process was fatal to their Complaint, since it is only respondent George de Castro who resides in Alaminos City, Pangasinan, while respondent Annie de Castro resides in Pennsylvania, United States of America (USA); respondent Felomina de Castro Uban, in California, USA; and respondent Jesus de Castro, now substituted by his wife, Martiniana, resides in Manila. Respondents further claimed that the MTC was not divested of jurisdiction over their Complaint for ejectment because of the mere absence therein of the term "unlawful withholding" of their subject property, considering that they had sufficiently alleged the same in their Complaint, albeit worded differently. Finally, respondents posited that the fact that only respondent George de Castro signed the Verification and the Certificate of Non-Forum Shopping attached to the Complaint was irrelevant since the other respondents already executed Special Powers of Attorney (SPAs) authorizing him to act as their attorney-in-fact in the institution of the ejectment suit against the petitioner.

On 19 September 2006, the Court of Appeals rendered a Decision granting the respondents' Petition and ordering petitioner to vacate the subject property and turn over the same to respondents. The Court of Appeals decreed:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision dated June 27, 2005 issued by the RTC of Alaminos City, Pangasinan, Branch 54, is REVERSED and SET ASIDE. A new one is hereby rendered ordering [herein petitioner] Leo Wee to SURRENDER and VACATE the leased premises in question as well as to pay the sum of ₱15,000.00 per month reckoned from March, 2002 until he shall have actually turned over the possession thereof to petitioners plus the rental arrearages of ₱30,000.00 representing unpaid increase in rent for the period from October, 2001 to February, 2002, with legal interest at 6% per annum

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[13] *Id.* at 50-58.

to be computed from June 7, 2002 until finality of this decision and 12% thereafter until full payment thereof. Respondent is likewise hereby ordered to pay petitioners the amount of ₱20,000.00 as and for attorney's fees and the costs of suit.[14]

In a Resolution dated 25 January 2007, the appellate court denied the Motion for Reconsideration interposed by petitioner for lack of merit.

Petitioner is now before this Court *via* the Petition at bar, making the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT CONCILIATION PROCESS IS NOT A JURISDICTIONAL REQUIREMENT THAT NON-COMPLIANCE THEREWITH DOES NOT AFFECT THE JURISDICTION IN EJECTMENT CASE;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE SUFFICIENCY OF THE ALLEGATIONS IN THE COMPLAINT FOR EJECTMENT DESPITE THE WANT OF ALLEGATION OF "UNLAWFUL WITHOLDING PREMISES" (sic) QUESTIONED BY PETITIONER;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE FILING OF THE COMPLAINT OF RESPONDENT GEORGE DE CASTRO WITHOUT JOINING ALL HIS OTHER CO-OWNERS OVER THE SUBJECT PROPERTY IS PROPER;

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING SUPREME COURT CIRCULAR NO. 10 WHICH DIRECTS A PLEADER TO INDICATE IN HIS PLEADINGS HIS OFFICIAL RECEIPT OF HIS PAYMENT OF HIS IBP DUES.[15]

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[14] *Id.* at 35.

[15] *Id.* at 1-25.

Petitioner avers that respondents failed to go through the conciliation process before the *Barangay Lupon*, a jurisdictional defect that bars the legal action for ejectment. The Certification to file action dated 18 January 2002 issued by the *Barangay Lupon*, appended by the respondents to their Complaint in Civil Case No. 1990, is of no moment, for it attested only that there was confrontation between the parties on the matter of rental increase but not on unlawful detainer of the subject property by the petitioner. If it was the intention of the respondents from the very beginning to eject petitioner from the subject property, they should have brought up the alleged unlawful stay of the petitioner on the subject property for conciliation before the *Barangay Lupon*.

The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the *barangay* courts which, according to the one who conceived of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character; and to make it truly effective, it should also be compulsory. With this primary objective of the *barangay* justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508 (*Katarungang Pambarangay* Law), which would be better served if an out-of-court settlement of the case is reached voluntarily by the parties.[16] To ensure this objective, Section 6 of Presidential Decree No. 1508 requires the parties to undergo a conciliation process before the *Lupon Chairman* or the *Pangkat ng Tagapagkasundo* as a precondition to filing a complaint in court subject to certain exceptions. The said section has been declared compulsory in nature.[17]

Presidential Decree No. 1508 is now incorporated in Republic Act No. 7160 (The Local Government Code), which took effect on 1 January 1992.

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[16] *People v. Caruncho, Jr.*, 212 Phil. 16, 27 (1984).

[17] *Morata v. Go*, 210 Phil. 367, 372 (1983).

The pertinent provisions of the Local Government Code making conciliation a precondition to the filing of complaints in court are reproduced below:

SEC. 412. *Conciliation*.- (a) *Pre-condition to filing of complaint in court*. – No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court*. – The parties may go directly to court in the following instances:

(1) Where the accused is under detention;

(2) Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

(3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; and

(4) Where the action may otherwise be barred by the statute of limitations.

(c) *Conciliation among members of indigenous cultural communities*. – The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

SEC. 408. *Subject Matter for Amicable Settlement; Exception Thereto*. – The *lupon* of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

(a) Where one party is the government or any subdivision or instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (₱5,000.00);

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;

(f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

There is no question that the parties to this case appeared before the *Barangay Lupon* for conciliation proceedings. There is also no dispute that the only matter referred to the *Barangay Lupon* for conciliation was the rental increase, and not the ejectment of petitioner from the subject property. This is apparent from a perusal of the Certification to file action in court issued by the *Barangay Lupon* on 18 January 2002, to wit:

CERTIFICATION TO FILE COMPLAINTS

This is to certify that:

1. There was personal confrontation between parties before the *barangay Lupon* **regarding rental increase** of a commercial building but conciliation failed;

2. Therefore, the corresponding dispute of the above-entitled case may now be filed in Court/Government Office.[18] (Emphasis ours.)

The question now to be resolved by this Court is whether the Certification dated 18 January 2002 issued by the *Barangay*

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

Lupon stating that no settlement was reached by the parties on the matter of rental increase sufficient to comply with the prior conciliation requirement under the *Katarungang Pambarangay* Law to authorize the respondents to institute the ejectment suit against petitioner.

The Court rules affirmatively.

While it is true that the Certification to file action dated 18 January 2002 of the *Barangay Lupon* refers only to rental increase and not to the ejectment of petitioner from the subject property, the submission of the same for conciliation before the *Barangay Lupon* constitutes sufficient compliance with the provisions of the *Katarungang Pambarangay* Law. Given the particular circumstances of the case at bar, the conciliation proceedings for the amount of monthly rental should logically and reasonably include also the matter of the possession of the property subject of the rental, the lease agreement, and the violation of the terms thereof.

We now proceed to discuss the meat of the controversy.

The contract of lease between the parties did not stipulate a fixed period. Hence, the parties agreed to the payment of rentals on a monthly basis. On this score, Article 1687 of the Civil Code provides:

> Art. 1687. **If the period for the lease has not been fixed**, it is understood to be from year to year, **if the rent agreed upon is** annual; **from month to month, if it is monthly**; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. (Emphasis supplied.)

The rentals being paid monthly, the period of such lease is deemed terminated at the end of each month. Thus, respondents have every right to demand the ejectment of petitioners at the

end of each month, the contract having expired by operation of law. Without a lease contract, petitioner has no right of possession to the subject property and must vacate the same. Respondents, thus, should be allowed to resort to an action for ejectment before the MTC to recover possession of the subject property from petitioner.

Corollarily, petitioner's ejectment, in this case, is only the reasonable consequence of his unrelenting refusal to comply with the respondents' demand for the payment of rental increase agreed upon by both parties. Verily, the lessor's right to rescind the contract of lease for non-payment of the demanded increased rental was recognized by this Court in *Chua v. Victorio*[19]:

> The right of rescission is statutorily recognized in reciprocal obligations, such as contracts of lease. In addition to the general remedy of rescission granted under Article 1191 of the Civil Code, there is an independent provision granting the remedy of rescission for breach of any of the lessor or lessee's statutory obligations. Under Article 1659 of the Civil Code, the aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force.
>
> **Payment of the rent is one of a lessee's statutory obligations, and, upon non-payment by petitioners of the increased rental in September 1994, the lessor acquired the right to avail of any of the three remedies outlined above.** (Emphasis supplied.)

Petitioner next argues that respondent George de Castro cannot maintain an action for ejectment against petitioner, without joining all his co-owners.

Article 487 of the New Civil Code is explicit on this point:

> ART. 487. Any one of the co-owners may bring an action in ejectment.

This article covers all kinds of action for the recovery of possession, *i.e.*, forcible entry and unlawful detainer *(accion*

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[19] G.R. No. 157568, 18 May 2004, 428 SCRA 447, 452-453.

interdictal), recovery of possession *(accion publiciana),* and recovery of ownership *(accion de reivindicacion).* As explained by the renowned civilist, Professor Arturo M. Tolentino[20]:

> **A co-owner may bring such an action, 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.** If the action is for the benefit of the plaintiff alone, such that he claims possession for himself and not for the co-ownership, the action will not prosper. (Emphasis added.)

In the more recent case of *Carandang v. Heirs of De Guzman*,[21] this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus:

> In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.

Moreover, respondents Annie de Castro and Felomina de Castro Uban each executed a Special Power of Attorney, giving respondent George de Castro the authority to initiate Civil Case No. 1990.

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization

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[20] Tolentino, *CIVIL CODE OF THE PHILIPPINES*, Vol. II (1983 Ed.), p. 157.

[21] G.R. No. 160347, 29 November 2006, 508 SCRA 469, 487-488.

itself is the power of attorney, and this is clearly indicated by the fact that it has also been called a "letter of attorney."[22]

Even then, the Court views the SPAs as mere surplusage, such that the lack thereof does not in any way affect the validity of the action for ejectment instituted by respondent George de Castro. This also disposes of petitioner's contention that respondent George de Castro lacked the authority to sign the Verification and the Certificate of Non-Forum Shopping. As the Court ruled in *Mendoza v. Coronel*[23]:

> **We likewise hold that the execution of the certification against forum shopping by the attorney-in-fact in the case at bar is not a violation of the requirement that the parties must personally sign the same.** The attorney-in-fact, who has authority to file, and who actually filed the complaint as the representative of the plaintiff co-owner, pursuant to a Special Power of Attorney, is a party to the ejectment suit. In fact, Section 1, Rule 70 of the Rules of Court includes the representative of the owner in an ejectment suit as one of the parties authorized to institute the proceedings. (Emphasis supplied.)

Failure by respondent George de Castro to attach the said SPAs to the Complaint is innocuous, since it is undisputed that he was granted by his sisters the authority to file the action for ejectment against petitioner prior to the institution of Civil Case No. 1990. The SPAs in his favor were respectively executed by respondents Annie de Castro and Felomina de Castro Uban on **7 February 2002** and **14 March 2002**; while Civil Case No. 1990 was filed by respondent George de Castro on his own behalf and on behalf of his siblings only on **1 July 2002,** or way after he was given by his siblings the authority to file said action. The Court quotes with approval the following disquisition of the Court of Appeals:

> Moreover, records show that [herein respondent] George de Castro was indeed authorized by his sisters Annie de Castro and Felomina de Castro Uban, to prosecute the case in their behalf as shown by

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[22] 3 Am. Jur. 2d, 433.

[23] G.R. No. 156402, 13 February 2006, 482 SCRA 353, 359.

the Special Power of Attorney dated February 7, 2002 and March 14, 2002. That these documents were appended only to [respondent George de Castro's] position paper is of no moment considering that the authority conferred therein was given prior to the institution of the complaint in July, 2002. x x x.[24]

Respondent deceased Jesus de Castro's failure to sign the Verification and Certificate of Non-Forum Shopping may be excused since he already executed an Affidavit[25] with respondent George de Castro that he had personal knowledge of the filing of Civil Case No. 1990. In *Torres v. Specialized Packaging Development Corporation*,[26] the Court ruled that the personal signing of the verification requirement was deemed substantially complied with when, as in the instant case, two out of 25 real parties-in-interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it.

In the same vein, this Court is not persuaded by petitioner's assertion that respondents' failure to allege the jurisdictional fact that there was "unlawful withholding" of the subject property was fatal to their cause of action.

It is apodictic that what determines the nature of an action as well as which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought. In an unlawful detainer case, the defendant's possession was originally lawful but ceased to be so upon the expiration of his right to possess. Hence, the phrase "unlawful withholding" has been held to imply possession on the part of defendant, which was legal in the beginning, having no other source than a contract, express or implied, and which later expired as a right and is being withheld by defendant.[27]

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[24] *Rollo,* pp. 32-33.

[25] CA *rollo,* p. 34.

[26] G.R. No. 149634, 6 July 2004, 433 SCRA 455.

[27] *Umpoc v. Mercado*, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 232.

In *Barba v. Court of Appeals*,[28] the Court held that although the phrase "unlawfully withholding" was not actually used by therein petitioner in her complaint, the Court held that her allegations, nonetheless, amounted to an unlawful withholding of the subject property by therein private respondents, because they continuously refused to vacate the premises even after notice and demand.

In the Petition at bar, respondents alleged in their Complaint that they are the registered owners of the subject property; the subject property was being occupied by the petitioner pursuant to a monthly lease contract; petitioner refused to accede to respondents' demand for rental increase; the respondents sent petitioner a letter terminating the lease agreement and demanding that petitioner vacate and turn over the possession of the subject property to respondents; and despite such demand, petitioner failed to surrender the subject property to respondents.[29] The Complaint sufficiently alleges the unlawful withholding of the subject property by petitioner, constitutive of unlawful detainer, although the exact words "unlawful withholding" were not used. In an action for unlawful detainer, an allegation that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient, without necessarily employing the terminology of the law.[30]

Petitioner's averment that the Court of Appeals should have dismissed respondents' Petition in light of the failure of their counsel to attach the Official Receipt of his updated payment of Integrated Bar of the Philippines (IBP) dues is now moot and academic, since respondents' counsel has already duly complied therewith. It must be stressed that judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities.[31] Where a rigid application of

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[28] 426 Phil. 598 (2002) as cited in *Umpoc v. Mercado, id.*

[29] *Rollo*, pp. 39-45.

[30] *Javelosa v. Court of Appeals*, 333 Phil. 331, 339 (1996).

[31] *Fulgencio v. National Labor Relations Commission*, 457 Phil. 868, 880-881 (2003).

the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case.[32]

Finally, we agree in the ruling of the Court of Appeals that petitioner is liable for the payment of back rentals, attorney's fees and cost of the suit. Respondents must be duly indemnified for the loss of income from the subject property on account of petitioner's refusal to vacate the leased premises.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Decision dated 19 September 2006 and Resolution dated 25 January 2007 of the Court of Appeals in CA-G.R. SP No. 90906 are hereby *AFFIRMED in toto.* Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177276. August 20, 2008]

GRACIANO SANTOS OLALIA, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF WITNESSES.— The prosecution, through the testimony of Rommel, positively

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[32] *Id.*

identified petitioner as one of the men who assaulted him. Rommel likewise declared in the witness stand that he heard Pedro order petitioner and Jeffrey to kill him: xxx. Witness Roderick Poquiz, who was in the place where the incident happened, corroborated Rommel's testimony that petitioner was one of the perpetrators of the crime: xxx. These detailed accounts eloquently depict what transpired on the night in question. Only trustworthy witnesses could have described such picturesque view of the incident which ineluctably points to petitioner as one of the culprits in the wrongdoing. Given the sincere, trustworthy and positive identification by the prosecution witnesses of the assailants and the latter's respective participation in the felony, petitioner's denial is rendered futile. Under settled jurisprudence, denial cannot prevail over the positive testimonies of witnesses. Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

2. ID.; ID.; CONSPIRACY; WHEN PRESENT.— There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of a previous agreement to commit a crime is not necessary. Conspiracy may be deduced from the acts of the accused before, during, and after the commission of the crime, which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack, so that the act of one accused becomes the act of all.

3. ID.; ID.; ID.; IF PROVED, ALL THE CONSPIRATORS ARE LIABLE AS PRINCIPAL REGARDLESS OF THE EXTENT AND CHARACTER OF THEIR PARTICIPATION.— In the case under consideration, unity of design or objective can easily be drawn from the concerted acts of the three assailants. Coming from a drinking party, it is not far-fetched to infer that the three were easily agitated and peeved by the straightforward answer of Rommel when asked to move to the side of the road. They rushed towards the target. Jeffrey, who was the first to get near the victim, right away hit the victim's face. Petitioner and Pedro joined in the punching spree, throwing punches and pounding.

As the victim tried to pick himself up, Pedro ordered his companions to kill him. Jeffrey complied and dealt several stab blows to the victim, while petitioner stood behind Jeffrey. Petitioner's act of punching the victim indubitably showed his desire to hurt him, which intent was also shared by Pedro and Jeffrey. Moreover, his presence during the stabbing served no other purpose than to ensure that no one else would come to the aid of the victim and thereby stop their criminal design from being accomplished. If indeed his desire was merely to punch the victim, he could have told or stopped Jeffrey from stabbing Rommel, since Jeffrey was just in front of him. However, instead of doing so, he remained where he was. He committed no act whatsoever to indicate that he did not concur with the act of stabbing or killing the victim. Thus, their conspiracy is evident, notwithstanding petitioner's assertion that he did not participate in the stabbing. Having shown that the three were in conspiracy through their concerted acts, there is collective criminal responsibility, since "all the conspirators are liable as principals regardless of the extent and character of their participation, because the act of one is the act of all."

4. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; ESSENCE; FRONTAL ATTACK CAN BE TREACHEROUS WHEN IT IS SUDDEN AND UNEXPECTED AND THE VICTIM IS UNARMED.— The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate. In the instant case, the victim who fixed his attention to what he was doing and was unwary of what the assailants were about to do, and without warning, was suddenly mauled by the three. When he was about to get out from the canal, he was again hit. The barrage of bodily harm inflicted on the victim culminated in the stabbing. Said attack was so sudden and unexpected that the victim had not been given the opportunity to defend himself or repel the aggression. He was unarmed when he was attacked. Indeed, all these circumstances indicate that the assault on the victim was treacherous. While he was at some point able to avoid some

of the stab blows, that does not mean that the aggression was not sudden. The survival instinct, which is inherent in every extant human being, may have worked well for the victim, or he might just have been fortunate to escape some of the thrusts dealt him, but these things would not negate the presence of treachery. Contrary to petitioner's claim, there was no heated argument preceding the aggression. Victim Rommel Camacho merely testified that when he was ordered by Jeffrey to get out of the way, he answered that the road was wide enough for the tricycle to pass through. Jeffrey's order and the victim's answer can hardly be considered as a heated argument.

5. ID.; ATTEMPTED MURDER; COMMITTED WHERE THE WOUND INFLICTED ON THE VICTIM IS NOT SUFFICIENT TO CAUSE HIS DEATH.— The rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death. By commencing their criminal design by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than their own desistance, petitioner and his cohorts committed an attempted felony. In the instant case the three assailants already commenced their attack with a manifest intent to kill by punching Rommel countless times and when one of the malefactors stabbed him, but failed to perform all the acts of execution by reason of causes independent of his will, that is, the agility of the victim. Rommel sustained three stab wounds which were characterized by the prosecution witness Dr. Mario Ferdinand Garcia as non-penetrating or non-life-threatening wounds.

6. ID.; ID.; IMPOSABLE PENALTY; APPLICATION OF INDETERMINATE SENTENCE LAW.— The penalty of consummated murder under Article 248 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. The imposable penalty should be reduced by two degrees under Article 68 of the Revised Penal Code because the appellant is a minor. As reduced, the penalty is *reclusion temporal*. *Reclusion temporal* should be reduced by two degrees lower, conformably to Article 51 of the Revised Penal Code, which is *prision correccional.* Applying the Indeterminate Sentence Law,

the penalty imposable on a principal in an attempted murder, where there is no aggravating or mitigating circumstance, is *prision correccional* in its maximum period to *prision mayor* in its medium period. As applied, appellant shall suffer the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum.

7. ID.; ID.; CIVIL LIABILITY OF ACCUSED-PETITIONER.— As to the damages, we affirm the actual damages awarded by the RTC to Dionisio Camacho in the amount of ₱12,356.75, the same being supported by receipts.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE FAVORABLE JUDGMENT ON PETITIONER'S APPEAL SHOULD BE EXTENDED TO HIS CO-ACCUSED WHO DID NOT APPEAL.— Records reveal that the Court of Appeals affirmed the RTC decision convicting Graciano Santos Olalia, Jr., Pedro Poquiz and Jeffrey Poquiz of frustrated murder. However, only petitioner Graciano Santos Olalia, Jr. appealed the judgment of conviction. Accused Pedro Poquiz and Jeffrey Poquiz, for unknown reasons, did not seek to assail their conviction before the Court. Since the Court downgraded the crime committed by petitioner from frustrated murder to attempted murder, and considering that the same set of facts were used to convict Pedro Poquiz and Jeffrey Poquiz, the Court holds, that the favorable verdict on petitioner's appeal should likewise be extended to Pedro Poquiz and Jeffrey Poquiz, since under Section 11(a), Rule 122 of the present Rules on criminal procedure, an "appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

APPEARANCES OF COUNSEL

Regino Palma Raagas Esguerra & Associates Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which assails the Decision[1] of the Court of Appeals in CA-G.R. CR No. 23725 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 56, finding petitioner Graciano Santos Olalia, Jr. and his co-accused Jeffrey Poquiz and Pedro Poquiz, guilty beyond reasonable doubt of the crime of Frustrated Murder.

On 25 March 1998, an Information for Frustrated Murder was filed before the RTC against petitioner Graciano Santos Olalia, Jr. (Graciano), Jeffrey Poquiz (Jeffrey) and Pedro Poquiz (Pedro), which was docketed as Criminal Case No. SCC-2818. The accusatory portion of the Information reads:

> That on or about February 21, 1998 in the evening in the Poblacion, Municipality of Bayambang, Province of Pangasinan, xxx and within the jurisdiction of this [Honorable] Court, the above-named accused with intent to kill, with treachery and superior strength, conspiring, confederating and mutually helping one another, unlawfully and feloniously attack, assault and stab Rommel Camacho with a knife inflicting upon him the following injuries:
>
> - Non-penetrating stab wound 3 cm. 5th intercostal space mid axillary line (L)
> - Non-penetrating stab wound 1.5 cm. scapular area (L)
> - 2 cm. stab wound supra orbital area (L)
>
> the accused having thus performed all the acts of execution which should have produced the crime of Murder as a consequence but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and that is due to the timely

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[1] Penned by Associate Regalado E. Maambong with Associate Justices Marina L. Buzon and Japar B. Dimaampao, concurring. *Rollo,* pp. 85-107.

[2] Penned by Judge Edelwina Catubig Pastoral; *rollo,* pp. 30-36.

medical assistance afforded to said Rommel Camacho which prevented his death and to his damage and prejudice.[3]

During the arraignment on 3 July 1998, petitioner and his co-accused, with the assistance of counsel *de parte*, entered their respective pleas of not guilty.[4] Thereafter, trial on the merits ensued.

At the trial, the prosecution presented the following witnesses: (1) The 24-year old victim himself, Rommel Camacho (Rommel), who testified on matters that occurred prior, during and after the alleged stabbing incident; (2) Analyn Fernandez, a 15-year old eyewitness and one of Rommel's companions during the incident in question, whose testimony corroborated that of the victim; (3) Roderick Poquiz, a by-stander who witnessed the mauling and the stabbing incident; (4) Dr. Mario Ferdinand Garcia, the physician who attended to the injuries of Rommel; and (5) Dionisio Camacho, the victim's father who testified on the actual expenses incurred as a result of the injury.

As documentary evidence, the prosecution offered the following: Exhibit "A" – the Affidavit of a certain Maricel Soriano declaring that she witnessed the stabbing incident of Rommel; Exhibit "B" – the sworn statement of Rommel; Exhibit "C" – the Medical Certificate of Rommel; Exhibit "D" - the receipts for the medical expenses in the treatment of the injuries suffered by the victim; and Exhibit "E" - the receipts for the transportation expenses of the victim's father who traveled from Bicol to Pangasinan to be with the victim.

The collective evidence adduced by the prosecution shows that at around 9:20 p.m. of 21 February 1998, while Rommel was squatting along Burgos Street, Zone 4 of Poblacion, Bayambang, Pangasinan, trying to disentangle the warped chain of the *tribike* he was driving, a tricycle driven by petitioner Graciano, and which had as passengers, the accused Jeffrey

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[3] *Rollo*, p. 30.

[4] Records, Vol. I, p. 84.

and Pedro, came by and stopped at the other side of the street. Rommel was with Maylani Poquiz and Analyn Fernandez. Jeffrey told Rommel to move the *tribike* to the far side of the road. Rommel replied that the road was wide enough for the tricycle to pass through. The three men on board the tricycle alighted. Jeffrey proceeded to the direction of Rommel with Graciano and Pedro following immediately behind. Without warning, Jeffrey punched Rommel's face. Graciano and Pedro lost no time and joined in the onslaught by punching the victim until he fell in the muddy canal at the side of the road. Pedro continued the attack by kicking the victim several times. As Rommel was trying to lift himself out of the canal, Pedro ordered Graciano and Jeffrey to kill the victim. Jeffrey right away drew a knife and lunged the same at Rommel's back several times. Rommel tried to dodge the attack, but his effort did not totally spare him from harm as he absorbed some wounds at his back and on the eyebrow. Feeling helpless, Rommel raised his two hands and pleaded his attackers to stop. He was nonetheless stabbed on the left side of his armpit and fell to the ground on his butt. The three assailants boarded the tricycle and sped off. Maylani Poquiz shouted for help so Rommel could be brought to the hospital. Rommel was first taken to the Bayambang Emergency Hospital and was later transferred to the Provincial General Hospital where he was confined for three days.

The medical certificate of Rommel shows that there were three non-penetrating wounds sustained by him: first, at the back or the scapular area; second, near the left armpit or the intercostal space, mid-axillary line; and third, at the eyebrow or the supra-orbital area.

Dr. Mario Ferdinand Garcia, the attending physician of Rommel, testified that the victim could still survive his injuries even without the immediate medical assistance. He admitted though that he injected the patient with anti-tetanus serum to prevent him from dying of tetanus.

As a result of the incident, the victim's father, Dionisio Camacho, who was attending to family matters in Bicol, was forced to travel to Pangasinan and incur expenses, as evidenced

by receipts, in the amount of ₱1,880.00. The victim's father likewise spent ₱10,476.75 for hospital and medical bills.

On the other hand, accused Jeffrey invoked self-defense, while accused Pedro and petitioner Graciano interposed the defense of denial. To prove their respective theories, only the testimonies of the three were presented.

Jeffrey, 21 years old and nephew of accused Pedro, testified that on the night in question, he and his companions, Graciano and Pedro, were riding on a tricycle driven by Graciano, heading home from a send-off party of a certain Atty. Benedicto Cayabyab, when they were stalled as someone was blocking the middle of the road.[5] He told the man, who was then fixing the tribike, to move to the side of the road.[6] The man, whom he identified as Rommel, responded rudely, "*Vulva of your mother all of you, this road is not yours.*" Jeffrey tried to talk to Rommel and approached him. As he was approaching, Rommel brandished a screwdriver and stabbed Jeffrey. Jeffrey parried the strike and pushed Rommel to the canal at the side of the road.[7] Rommel fell. He, together with Graciano and Pedro, left. He also said that during the incident, Pedro was inside the tricycle sleeping, while Graciano stayed on the driver's seat.[8] When asked during cross-examination if he reported to the police officers the attempt on his life by Rommel, he responded that it was not necessary, as he thought that such incident was inconsequential.[9]

Pedro, 51 years old, testified he was drunk and was asleep throughout the journey from Atty. Cayabyab's party to his house. He came to know of the pushing incident involving Jeffrey and Rommel when he was in his house when Jeffrey narrated to

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[5] TSN, 21 July 1999, p. 29.

[6] *Id.*

[7] *Id.* at 30.

[8] *Id.*

[9] TSN, 23 July 1999, p. 32.

him the occurrence.[10] Upon learning of the incident, he, too, did not deem it necessary to report it to the police authorities.[11]

Graciano corroborated the testimony of Jeffrey, stating that while they were plying Burgos Street, they slowed down by Rommel's side, as the latter was fixing a *tribike* in the middle of the street. Jeffrey instructed Rommel to move his *tribike* to the side of the road and to fix it there. Rommel replied by uttering offensive and obscene words. Jeffrey went near Rommel and a heated argument between the two followed. Graciano saw Jeffrey push Rommel, with the latter falling into the canal. Graciano further said that during the commotion, he remained on the driver's seat, while Pedro was intoxicated and asleep on the passenger's seat. On cross-examination, he said he neither saw Rommel stab Jeffrey with a screw driver nor did he see Jeffrey stab Rommel.[12]

On 17 August 1999, the RTC rendered a decision finding petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

> WHEREFORE, premises considered, herein three accused, Jeffrey Calpao Poquiz, Pedro Pidlaoan Poquiz and Graciano Santos Olalia, Jr., nicknamed "Junior", are hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder penalized by Article 248 in relation to Articles 6 and 50 of the Revised Penal Code, as amended by R.A. No. 7659. They should suffer the indeterminate prison term of six (6) years, one (1) month and ten (10) days of *prision mayor*, minimum, to twelve (12) years and one (1) day of *reclusion temporal*, maximum, including the accessory penalties provided by law. They should proportionately pay Dionisio Mabanglo Camacho, the father of the victim who shouldered the total expenses of ₱12,356.75.[13]

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[10] *Id.* at 27-28.

[11] *Id.* at 31.

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

[13] Records, Vol. I, p. 255.

On 27 August 1999, Graciano, Pedro and Jeffrey filed a notice of appeal.

In an Order dated 30 August 1999, the RTC ordered the transmittal of the entire records of the case to the Court of Appeals.[14]

Despite their notice of appeal, on 31 August 1999, Pedro and Graciano, nonetheless, filed a Motion for Reconsideration.[15]

Since all the accused already perfected their appeal, and since the RTC lost jurisdiction over the case by reason of the appeal, it did not resolve the motion for reconsideration.

The Court of Appeals, on 25 September 2006, promulgated its Decision affirming the decision of the RTC, with modification on the penalty imposed, thus:

> WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 56 of San Carlos City, Pangasinan in Criminal Case No. SCC-2818 finding appellants Jeffrey Poquiz, Pedro Poquiz, and Junior Olalia GUILTY beyond reasonable doubt is AFFIRMED with Modification. As modified, the appellants are hereby sentenced to suffer the indeterminate penalty of Six (6) Years, One (1) Month and Ten (10) Days of *prision mayor* as minimum to Fourteen (14) Years, Eight (8) Months and one (1) Day of *reclusion temporal* as maximum. The appellants' solidary liability for the amount of ₱12,356.75 to the victim's father Dionisio Mabanglo Camacho is AFFIRMED.[16]

On 19 October 2006, petitioner alone filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution[17] dated 2 March 2007.

Hence, the instant petition filed by petitioner Graciano Santos Olalia, Jr.

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[14] *Id.* at 344.

[15] *Id.* at 345-352.

[16] CA *rollo*, pp. 102-103.

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

Petitioner asserts that the prosecution failed to establish his guilt beyond reasonable doubt.

This submission is unmeritorious.

The prosecution, through the testimony of Rommel, positively identified petitioner as one of the men who assaulted him. Rommel likewise declared in the witness stand that he heard Pedro order petitioner and Jeffrey to kill him:

Pros. Manaois:

Q: While you were fixing your *tribike* beside the road, near the corner, do you recall if there was any unusual incident that happened?

A: Yes, sir.

Q: What was that unusual incident?

A: The tricycle of Pedro Poquiz arrived, sir.

Q: And what happened when the tricycle of Pedro Poquiz arrived?

A: They stopped near us, sir.

Q: And when they stopped, what happened next?

A: They shouted, they were asking us (sic) to move our *tribike* at the side of the road, sir.

Q: And what did you do?

A: I told them "the road is wide enough" and they can pass through, sir.

Q: After you told them that "the road is wide enough," they can pass through, what happened next?

A: They alighted, sir.

Q: Who alighted?

A: The three (3) of them, sir.

Q: And what did they do to you, if any?

A: Jeffrey Poquiz boxed me on my face, sir.

Q: How about Pedro Poquiz, what did he do to you?

A: He also boxed me, sir.

Q: How about Junior Olalia, what did he do to you?

A: The three helped one another in mauling me, sir.

Q: After you were boxed on the face several times, what happened to you after you were boxed by the three (3) accused on the face?

A: I fell on the canal, sir.

Q: And what happened next after you fell on the canal?

A: When I fell on the canal, Pedro Poquiz kicked me several times, sir.

Q: Were you hit?

A: Yes, sir.

Court:

Q: Where?

A: In the different parts of my body, your Honor.

Pros. Manaois:

Q: After you were kicked by Pedro Poquiz on the different parts of your body, what happened next?

A: I went out of the canal, sir.

Q: Were you able to go out of the canal?

A: Yes, sir.

Q: And what happened after you went out of the canal?

A: Pedro Poquiz ordered that I be killed, sir.

Q: To whom did Pedro Poquiz order to kill you?

A: His two (2) companions.

Q: You are referring to Jeffrey Poquiz and Junior Olalia?

A: Yes, sir.

Q: And what happened after Pedro Poquiz ordered his companions to kill you?

A: Jeffrey Poquiz drew a *balisong* (29), sir.

Q: After Jeffrey Poquiz drew his *balisong* (29), what happened next?

A: He stabbed me and I was hit at the back, sir.

Q: How many times?

A: Several times because the other thrust, I was not hit because I was able to evade, sir.

Q: What happened after you were hit?

A: He was moving back but he was still stabbing me and I was hit on my left elbow, sir.

Q: And after you moved back and you were still hit on the left eyebrow, what happened after that?

A: I was pleading "that's enough" (Witness is raising his two (2) hands) but I was still stabbed and I was hit on the armpit, sir. (witness pointing to his left armpit.)

Q: After you were hit on your left armpit, what did you do if you did anything?

A: I fell on the ground in a sitting position while my lady-companion shouted for help saying "help us", sir.

Q: How about the three (3) accused Jeffrey Poquiz, Pedro Poquiz and Junior Olalia, what did they do next?

A: They boarded the tricycle and left, sir.[18]

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[18] TSN, 2 December 1998, pp. 4-7.

Witness Roderick Poquiz, who was in the place where the incident happened, corroborated Rommel's testimony that petitioner was one of the perpetrators of the crime:

Q: While you were on that particular place, date and time, do you remember of any unusual incident that happened, Mr. witness?

A: While I was along the road, I heard a shout seeking for help, sir.

Q: What did you do after you heard those shouts?

A: I went to the place and to see what's happening, sir.

Q: And what did you see?

A: I saw Rommel Camacho being mauled by Jeffrey Poquiz, Pedro Poquiz and Junior Olalia, sir.

Q: Specifically, what did Jeffrey Poquiz do to Rommel Camacho?

A: Jeffrey Poquiz stabbed Rommel Camacho, sir.

Q: How many times?

A: Many times, sir, and Rommel Camacho was hit at the back, at the armpit (Witness pointing to the left armpit and at the forehead near the eye).

Q: How about Pedro Poquiz, what was his participation?

A: He helped in mauling boxing and kicking Rommel Camacho, sir.

Q: How about Junior Olalia, what did he do?

A: The same with what Pedro Poquiz did, sir.

Q: You said while (sic) ago that Jeffrey Poquiz stabbed Rommel Camacho several times, how did Jeffrey stabbed Rommel?

A: Witness raising his right hand in swaying position form back and forward at the level of his armpit?

Q: What weapon did he use in stabbing Rommel Camacho?

A: *Balisong,* sir.[19]

These detailed accounts eloquently depict what transpired on the night in question. Only trustworthy witnesses could have described such picturesque view of the incident which ineluctably points to petitioner as one of the culprits in the wrongdoing. Given the sincere, trustworthy and positive identification by the prosecution witnesses of the assailants and the latter's respective participation in the felony, petitioner's denial is rendered futile. Under settled jurisprudence, denial cannot prevail over the positive testimonies of witnesses. Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

Also, petitioner maintains that the RTC's findings on the attendance of conspiracy and on his participation in the stabbing of Rommel are based on a glaring misapprehension of facts. The testimonies of the prosecution witnesses, he avers, merely indicate that he and his co-accused punched the aggrieved party, but the same testimonies are absolutely silent as to his specific participation in the stabbing of said victim. He insists that he did not exhibit any overt act showing that he heeded the prodding of accused Pedro to kill Rommel. In fact, he dissociated himself from accused Jeffrey when the latter drew his knife but it was too late for him to prevent what his companions were about to do, since he had no idea what the two were thinking.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] Direct proof of a previous agreement to commit a crime is not necessary.[21] Conspiracy may be deduced from the acts of the accused before, during, and after the commission of the crime, which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.

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[19] TSN, 11 August 1998, pp. 11-12.

[20] *People v. Pagalasan,* 452 Phil. 341, 363 (2003).

[21] *People v. Panida,* 369 Phil. 311, 341 (1999).

It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack, so that the act of one accused becomes the act of all.[22]

In the case under consideration, unity of design or objective can easily be drawn from the concerted acts of the three assailants. Coming from a drinking party, it is not far-fetched to infer that the three were easily agitated and peeved by the straightforward answer of Rommel when asked to move to the side of the road. They rushed towards the target. Jeffrey, who was the first to get near the victim, right away hit the victim's face. Petitioner and Pedro joined in the punching spree, throwing punches and pounding. As the victim tried to pick himself up, Pedro ordered his companions to kill him. Jeffrey complied and dealt several stab blows to the victim, while petitioner stood behind Jeffrey. Petitioner's act of punching the victim indubitably showed his desire to hurt him, which intent was also shared by Pedro and Jeffrey. Moreover, his presence during the stabbing served no other purpose than to ensure that no one else would come to the aid of the victim and thereby stop their criminal design from being accomplished. If indeed his desire was merely to punch the victim, he could have told or stopped Jeffrey from stabbing Rommel, since Jeffrey was just in front of him. However, instead of doing so, he remained where he was. He committed no act whatsoever to indicate that he did not concur with the act of stabbing or killing the victim. Thus, their conspiracy is evident, notwithstanding petitioner's assertion that he did not participate in the stabbing. Having shown that the three were in conspiracy through their concerted acts, there is collective criminal responsibility, since "all the conspirators are liable as principals regardless of the extent and character of their participation, because the act of one is the act of all."

Petitioner also disagrees with the findings of the RTC and the Court of Appeals appreciating the aggravating circumstance of treachery. He claims it was error for said courts to rely on

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[22] *Id.*

the location of one of the stab wounds inflicted at the victim's back as a basis for considering the attack as treacherous. He states that the location alone of the wound, as ruled consistently by this Court, does not prove treachery. According to him, treachery could not have existed, since it was the victim who instigated the fight when he uttered insulting words against the assailants. This verbal altercation which immediately preceded the attack, he insists, would negate the presence of treachery. He adds that the fact that the victim was able to parry some stab blows and was able put up a fight indicates that the attack was not sudden and unexpected.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[23] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[24] What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.[25] In the instant case, the victim who fixed his attention to what he was doing and was unwary of what the assailants were about to do, and without warning, was suddenly mauled by the three. When he was about to get out from the canal, he was again hit. The barrage of bodily harm inflicted on the victim culminated in the stabbing. Said attack was so sudden and unexpected that the victim had not been given the opportunity to defend himself or repel the aggression. He was unarmed when he was attacked. Indeed, all these circumstances indicate that the assault on the victim was treacherous. While he was at some point able to avoid some of the stab blows, that does not mean that the aggression was not sudden. The survival instinct, which is inherent in every extant human being, may have worked well for the victim, or he might just have been fortunate to escape some of the thrusts dealt him, but these things would

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[23] *People v. Belaro*, 367 Phil. 90, 107 (1999).

[24] *Id.*

[25] *People v. Pidoy*, 453 Phil. 221, 230 (2003).

not negate the presence of treachery. Contrary to petitioner's claim, there was no heated argument preceding the aggression. Victim Rommel Camacho merely testified that when he was ordered by Jeffrey to get out of the way, he answered that the road was wide enough for the tricycle to pass through. Jeffrey's order and the victim's answer can hardly be considered as a heated argument.

Petitioner likewise makes much of the fact that the medical certificate presented by the prosecution states nothing about the injuries sustained from the punching. The seeming silence of the medical certificate on the injuries caused by the punching does not at all discount the evidence established by the prosecution of the act of mauling. The credible testimonies of the prosecution witnesses were sufficient to establish such fact.

The Office of the Solicitor General recommends that petitioner and his companions be convicted of attempted murder and not frustrated murder because the wounds inflicted were non-penetrating or not mortal wounds.

We subscribe to such argument.

The rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.[26] By commencing their criminal design by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than their own desistance, petitioner and his cohorts committed an attempted felony. In the instant case the three assailants already commenced their attack with a manifest intent to kill by punching Rommel countless times and when one of the malefactors stabbed him, but failed to perform all the acts of execution by reason of causes independent of his will, that is, the agility of the victim. Rommel sustained three stab wounds which were characterized by the prosecution witness Dr. Mario

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[26] *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 670-671.

Ferdinand Garcia as non-penetrating or non-life-threatening wounds.

The penalty of consummated murder under Article 248 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. The imposable penalty should be reduced by two degrees under Article 68 of the Revised Penal Code because the appellant is a minor. As reduced, the penalty is *reclusion temporal*. *Reclusion temporal* should be reduced by two degrees lower, conformably to Article 51 of the Revised Penal Code, which is *prision correccional*. Applying the Indeterminate Sentence Law, the penalty imposable on a principal in an attempted murder, where there is no aggravating or mitigating circumstance, is *prision correccional* in its maximum period to *prision mayor* in its medium period. As applied, appellant shall suffer the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum.

As to the damages, we affirm the actual damages awarded by the RTC to Dionisio Camacho in the amount of ₱12,356.75, the same being supported by receipts.

One last note. Records reveal that the Court of Appeals affirmed the RTC decision convicting Graciano Santos Olalia, Jr., Pedro Poquiz and Jeffrey Poquiz of frustrated murder. However, only petitioner Graciano Santos Olalia, Jr. appealed the judgment of conviction. Accused Pedro Poquiz and Jeffrey Poquiz, for unknown reasons, did not seek to assail their conviction before the Court. Since the Court downgraded the crime committed by petitioner from frustrated murder to attempted murder, and considering that the same set of facts were used to convict Pedro Poquiz and Jeffrey Poquiz, the Court holds, that the favorable verdict on petitioner's appeal should likewise be extended to Pedro Poquiz and Jeffrey Poquiz, since under Section 11(a), Rule 122 of the present Rules on criminal procedure, an "appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the

judgment of the appellate court is favorable and applicable to the latter."[27]

WHEREFORE, the Decision of the Court of Appeals dated 25 September 2006 in CA-G.R. CR. No. 23725 is hereby *MODIFIED*. Graciano Santos Olalia, Jr., Pedro Poquiz and Jeffrey Poquiz are found *GUILTY* of ATTEMPTED MURDER and are sentenced to suffer the prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum. They are also ordered to pay jointly and severally Dionisio Camacho, the father of the victim, the amount of ₱12,356.75 as actual damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178204. August 20, 2008]
(Formerly G.R. No. 156497)

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARCOS GANIGAN,** *appellant.*

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[27] *Lim v. Court of Appeals*, G.R. No. 147524, 20 June 2006, 491 SCRA 385, 394.

[*] Justice Dante O. Tinga was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated September 24, 2007.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT; ELEMENTS; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— The crime of illegal recruitment is committed when these two elements concur: (1) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; and (2) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code. In case of illegal recruitment in large scale, a third element is added — that the accused commits the acts against three or more persons, individually or as a group.

2. ID.; ID.; RECRUITMENT AND PLACEMENT, DEFINED.— Article 13(b) defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.

3. ID.; ID.; COMMITTED BY PERSONS WHO, WITHOUT AUTHORITY, GIVE THE IMPRESSION OF THEIR ABILITY TO ENLIST WORKERS FOR OVERSEAS EMPLOYMENT IN ORDER TO INDUCE THE LATTER TO TENDER PAYMENT OF FEES.— Since appellant, along with the other accused, made misrepresentations concerning their purported power and authority to recruit for overseas employment, and in the process collected from private complainants various amounts in the guise of placement fees, the former clearly committed acts constitutive of illegal recruitment. In fact, this Court held that illegal recruiters need not even expressly represent themselves to the victims as persons who have the ability to send workers abroad. It is enough that these recruiters give the impression that they have the ability to enlist workers for job placement abroad in order to induce the latter to tender payment of fees.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT

PARTICULARLY ON THE ASCERTAINMENT THEREOF, ACCORDED GREAT WEIGHT.— It is clear from the testimonies of private complainants that appellant undertook to recruit them for a purported employment in New Zealand and in the process collected various amounts from them as "assurance fees" and other fees related thereto. xxx. The trial court found these testimonies credible and convincing. Well-settled is the doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result. In the present case, we find no reason to depart from the rule.

5. ID.; ID.; DENIAL; POSITIVE AND CATEGORICAL TESTIMONIES OF COMPLAINANTS GIVEN WEIGHT THAN THE UNSUBSTANTIATED DENIAL PROFERRED BY APPELLANT.— Moreover, appellant has failed to rebut the evidence presented by the prosecution consisting of a receipt of payment signed by him. His flimsy denial that the signature on the receipt was not his own does not merit consideration in light of the trial court's contrary finding. As between the positive and categorical testimonies of private complainants and the unsubstantiated denial proffered by appellant, this Court is inclined to give more weight to the former.

6. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT IN LARGE SCALE; IMPOSABLE PENALTY.— In sum, appellant is correctly found guilty of large scale illegal recruitment tantamount to economic sabotage. Under Section 7(b) of Republic Act No. 8042, the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

TINGA, *J.*:

Before us for automatic review is the Decision[1] dated 14 November 2006 of the Court of Appeals affirming the judgment of conviction[2] for the crime of illegal recruitment rendered by the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 21.[3]

In an Information filed before the RTC, accused Ruth, Monchito, Eddie, Avelin Sulaiman and Marcos (appellant), all surnamed Ganigan, were charged with illegal recruitment committed as follows:

> That sometime between the period from July and August 1998 in Plaridel, Bulacan and within the jurisdiction of this Honorable Court, the above-named accused, representing themselves to have the capacity to contract, enlist and transport workers for employment in New Zealand, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit for a fee the following persons namely: MAURO EUSEBIO, VALENTINO CRISOSTOMO and LEONORA DOMINGO, all residents of Sto. Niño, Plaridel, Bulacan for employment in New Zealand, without first obtaining the required license and/or authority from the Philippine Overseas Employment Administration.
>
> CONTRARY TO LAW.[4]

Only appellant was arrested. The other accused remained at large.

Appellant, assisted by counsel, pleaded not guilty on arraignment. Trial ensued.

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[1] *Rollo*, pp. 3-14; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Remedios A. Salazar-Fernando and Noel G. Tijam.

[2] CA *rollo*, pp. 29-36.

[3] Presided by Acting Judge Rogelio C. Gonzales.

[4] Records, pp. 2-3.

The three private complainants, Leonora Domingo (Leonora), Mauro Reyes (Mauro), and Valentino Crisostomo (Valentino), testified for the prosecution.

They narrated that they first met appellant in the house of Manolito Reyes in Plaridel, Bulacan in June 1998. Appellant allegedly made representations to private complainants, among others, that his brother, Monchito, and his sister-in-law, Ruth, had the capacity to recruit apple and grape pickers for employment in New Zealand.[5]

On 5 July 1998, the group, composed of the three private complainants and 35 others,[6] went to La Union where they met with Monchito and Ruth. Ruth proceeded to explain their prospective employment with a $1,200.00 monthly salary. Ruth also required the group to attend bible study sessions every Sunday because their prospective employer is a devout Catholic. Pursuant to their desire to work in New Zealand, the group attended bible study from 5 July to December 1998.[7]

Each member of the group was asked to pay ₱2,000.00 as assurance fee.[8] Leonora paid an additional ₱400.00 for her National Statistics Office-issued birth certificate,[9] ₱500.00 for physical examination and ₱320.00 for medical fee.[10] Mauro gave an additional ₱320.00 for medical expenses[11] whereas Valentino shelled out ₱180.00 for pictures, ₱1,000.00 for bio-data and ₱350.00 for medical examination.[12] The three attested that appellant received their payment and a document was

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[5] TSN, 20 September 1999, p. 4; 14 August 2000, p. 2.

[6] TSN, 14 August 2000, p. 2.

[7] TSN, 20 September 1999, pp. 4-6; 14 August 2000, p. 2.

[8] See Doc. Exhibit, pp. 1, 16.

[9] *Id.* at 6.

[10] TSN, 17 December 1999, p. 4.

[11] TSN, 2 February 2000, p. 8.

[12] TSN, 14 August 2000, p. 4.

prepared by one of their companions as evidence of the receipt.[13] The exhibits submitted by the prosecution show that Monchito acknowledged having received a total of ₱101,480.00 from various applicants.[14] Other documents showed that appellant and Ruth received payment from the applicants.[15]

Ruth and appellant allegedly promised them that they would leave for New Zealand before October 1998. When they were unable to leave, however, they were told that their prospective employer would arrive in the Philippines on 22 November 1998. On the designated date, they were informed that their prospective employer fell down the stairway of the airplane. An interview was then scheduled on 29 December 1998 but on that day, they were told that their prospective employer had been held up. This prompted the complainants to go to the Philippine Overseas Employment Administration (POEA) to check on the background of the accused.

They learned that appellant, Ruth and Monchito do not have the authority to recruit workers for employment abroad.[16] Certifications to that effect were issued by the POEA.[17]

Appellant denied having recruited private complainants for work abroad. He claimed that he himself was also a victim as he had also paid ₱3,000.00 for himself and ₱2,000.00 for his daughter. He likewise attended the bible study sessions as a requirement for the overseas employment.[18] He contended that he was merely implicated in the case because he was the only one apprehended among the accused.[19]

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[13] TSN, 20 September 1999, p. 7.

[14] Doc. Exhibit, p. 4.

[15] *Id.* at 1, 5, 6, 9, 10.

[16] TSN, 11 February 2000, pp. 8-10; 20 September 1999, p. 8.

[17] Doc. Exhibits, pp. 2, 12.

[18] TSN, 23 October 2000, p. 4.

[19] TSN, 14 February 2001, p. 5.

The trial court rendered judgment convicting appellant of the crime of illegal recruitment. The dispositive portion of the decision reads:

> Wherefore, all premises considered, this Court finds and so holds that the prosecution was able to establish by proof beyond reasonable doubt the criminal culpability of the accused Marcos Ganigan on the offense charged against him. Accordingly, this Court finds him guilty of the crime of illegal recruitment in large scale resulting in economic sabotage as defined under Section 6 and penalized under Section 7(b) of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995. Accordingly, he is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> Accused Marcos Ganigan is also directed to pay complainants Leonora Domingo, Mauro Reyes and Valentino Crisostomo the amounts of ₱2,400.00 each plus the sum of ₱500.00 for Leonora Domingo for actual damages and ₱25,000.00 as and for moral damages.
>
> With regard to accused Ruth Ganigan, Monchito Ganigan, Eddie Ganigan and Avelin Sulaiman Ganigan, who remain at large until this time, the case against them is ordered archived. Let an *alias* Warrant of arrest be issued for their apprehension.
>
> SO ORDERED.[20]

The trial court found that all elements of illegal recruitment in large scale had been established through the testimonial and documentary evidence of the prosecution.

In view of the penalty imposed, the case was elevated to this Court on automatic review. However, this Court resolved to transfer the case to the Court of Appeals for intermediate review in light of our ruling in *People v. Mateo*.[21]

On 14 November 2006, the Court of Appeals affirmed the trial court's decision.

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[20] CA *rollo*, pp. 35-36.

[21] *Id.* at 120-123.

Upon receipt of the unfavorable decision, appellant filed a notice of appeal. On 15 October 2007, this Court resolved to accept the case and to require the parties to simultaneously submit their respective supplemental briefs. The Office of the Solicitor General (OSG) filed a Manifestation and Motion[22] stating that it would no longer file any supplemental briefs and instead adopt its appellee's brief filed on 12 January 2006. Appellant likewise manifested that he would merely adopt his appellant's brief.[23]

Appellant argues that the prosecution has failed to establish his guilt beyond reasonable doubt. He maintains that he did not participate in any recruitment activity and that the alleged payments made by private complainants were for membership in the Christian Catholic Mission, as shown by the fact that private complainants have regularly attended bible study sessions from 5 July to November 1998. He also points out that nothing on record would show that the necessary training or orientation seminar pertaining to the supposed employment has ever been conducted.

Assuming *arguendo* that the Christian Catholic Mission was only a front to an illegal venture, appellant avers that he was not part of the conspiracy because he was a victim himself as he in fact also paid assurance fees for membership in the Christian Catholic Mission. He laments that aside from introducing private complainants to Ruth, he has not done any other act tantamount to recruitment.

The OSG defended the decision of the trial court in giving full faith and credence to the testimonies of the complaining witnesses. It contends that there is no showing that the victims were impelled by any ill motive to falsely testify against appellant. It asserts that the collective testimony of the witnesses has categorically established appellant's participation in the crime.[24]

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[22] *Rollo*, pp. 120-123.

[23] *Id.* at 125-126.

[24] *Id.* at 106.

The crime of illegal recruitment is committed when these two elements concur: (1) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; and (2) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code. In case of illegal recruitment in large scale, a third element is added – that the accused commits the acts against three or more persons, individually or as a group.[25]

Article 13(b) defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.[26]

Since appellant, along with the other accused, made misrepresentations concerning their purported power and authority to recruit for overseas employment, and in the process collected from private complainants various amounts in the guise of placement fees, the former clearly committed acts constitutive of illegal recruitment. In fact, this Court held that illegal recruiters need not even expressly represent themselves to the victims as persons who have the ability to send workers abroad. It is enough that these recruiters give the impression that they have the ability to enlist workers for job placement abroad in order to induce the latter to tender payment of fees.[27]

It is clear from the testimonies of private complainants that appellant undertook to recruit them for a purported employment

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[25] *People v. Baytic*, 446 Phil. 23, 29 (2003).

[26] *People v. Alvarez*, 436 Phil. 255, 265 (2002).

[27] *People v. Lapis*, 439 Phil. 729, 741 (2002); *People v. Fortuna*, 443 Phil. 438 (2003).

in New Zealand and in the process collected various amounts from them as "assurance fees" and other fees related thereto.

Private complainants testified in a clear, positive and straightforward manner. Leonora testified that appellant recruited her to work in New Zealand as a fruit picker and was promised by Ruth a monthly salary of $1,200.00. She was required to pay an assurance fee of ₱2,000.00. She later learned that appellant and his cohorts had not been licensed by the POEA to recruit for overseas employment.[28] On cross-examination, she confirmed that she turned over the amount of fees to appellant with the understanding that such payment was for employment abroad.[29]

Mauro similarly recounted that he was introduced to Monchito and Ruth by appellant as an applicant for farm work in New Zealand. He was told to prepare ₱2,000.00 as assurance fee, which he paid to appellant. When he was unable to leave, he checked with the POEA and found out that appellant had no license to recruit.[30] During the cross-examination, Mauro was firm in his stance that he paid the amount of ₱2,000.00 as assurance of employment in New Zealand. Furthermore, he regularly attended the bible study as a requirement for said employment.[31]

Valentino's testimony corroborated that of Leonora and Mauro.[32]

The trial court found these testimonies credible and convincing.

Well-settled is the doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be

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[28] TSN, 20 September 1999, pp. 3-9.

[29] TSN, 17 December 1999, pp. 2-5.

[30] TSN, 11 February 2000, pp. 2-5, 7-10.

[31] TSN, 8 March 2000, pp. 2-4.

[32] TSN, 14 August 2000, pp. 2-3.

discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[33] In the present case, we find no reason to depart from the rule.

Verily, we agree with the OSG that the testimonies of private complainants have adequately established the elements of the crime, as well as appellant's indispensable participation therein. Appellant recruited at least three persons, the private complainants in this case, giving them the impression that he and his relatives had the capability of sending them to New Zealand for employment as fruit pickers. The OSG adds that appellant went to Bulacan to invite the victims and accompanied them to a fellowship and briefing in La Union; that appellant misrepresented that joining the religious group would ensure their overseas employment; and that appellant without any license or authority to recruit, collected various amounts from private complainants.

Appellant miserably failed to convince this Court that the payments made by the complainants were actually for their membership in the religious organization. He did not present any document to prove this allegation.

For their part, private complainants were adamant that the payments made to appellant were for purposes of employment to New Zealand. They further explained that their participation in the bible study sessions was but a requirement imposed by appellant because their prospective employer was also a member of the same religious group.

Moreover, appellant has failed to rebut the evidence presented by the prosecution consisting of a receipt of payment signed by him.[34] His flimsy denial that the signature on the receipt was not his own does not merit consideration in light of the trial court's contrary finding.

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[33] *Ferrer v. People*, G.R. No. 143487, 22 February 2006, 483 SCRA 31, 50.

[34] Doc. Exhibits, pp. 10-11.

As between the positive and categorical testimonies of private complainants and the unsubstantiated denial proffered by appellant, this Court is inclined to give more weight to the former.

In sum, appellant is correctly found guilty of large scale illegal recruitment tantamount to economic sabotage.

Under Section 7(b) of Republic Act No. 8042, the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000.000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00867 is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180925. August 20, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JAIME DEL CASTILLO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TEST OF CREDIBILITY, SUFFICIENTLY MET.— In a prosecution for rape, the victim's credibility becomes the single most important issue. For, when a woman says she was raped,

she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. In this case, the test of credibility of the rape victim was more than sufficiently met. AAA's account of the rape was spontaneous, categorical and detailed. As observed by the trial court, she testified in a straightforward manner on the rape incident from its start until its consummation. Moreover, the trial court noted that the inconsistencies adverted to by appellant were "not that substantial which would lead to discredit her testimony." AAA's apparent conflicting testimonies with respect to the order of injuries inflicted on her, as well as the time she claimed she told a friend about her plight are not material to the identification of appellant as the perpetrator. The failure of a witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken his or her credibility because it erases any suspicion of a coached or rehearsed testimony.

2. ID.; ID.; IDENTIFICATION OF THE ACCUSED, ESTABLISHED.— Appellant argues that it was improbable for AAA to identify the perpetrator because the house was without electricity and that it was dark. We are not persuaded. As correctly observed by the Office of the Solicitor General (OSG), AAA testified that appellant's face was illuminated by the light coming from the neighbor's house. Besides, AAA was familiar with appellant as the latter had been known to her for quite some time. Furthermore, while it is true that AAA was lying down and thus could not have seen the face of her assailant at the first instance, she nevertheless was able to identify him when the latter mounted her. Appellant's contention that AAA could not have seen the face of her assailant as she admitted that she never glanced at him after the assault was consummated, should likewise fail because at the time appellant supposedly ordered AAA to turn her back on him, AAA had already seen and identified his face and the rape had already been consummated.

3. ID.; ID.; MULTIPLE EVIDENCE; ABSENCE OF STRUGGLE DOES NOT NEGATE THE COMMISSION OF RAPE.— Appellant also questions the failure of AAA to resist the alleged advances considering that the latter is taller and bigger than him. Against

this question, the OSG argues that appellant, a male, is more powerful than AAA in terms of physical strength despite the fact that they are of the same height. It bears stressing that the absence of struggle on the part of the rape victim does not necessarily negate the commission of the offense. Failure to shout for help or fight back cannot be equated to voluntary submission to the criminal intent of the accused. It should be remembered that AAA was first threatened by appellant with a spoon which the latter poked at her neck. Fear, in lieu of force or violence, is subjective. Addressed to the mind of the victim of rape, its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the commission of the crime. In addition, as the Court has repeatedly observed, people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response that can be expected from those who are confronted with a strange, startling or frightening experience.

4. ID.; ID.; ID.; NON-FLIGHT IS NOT PROOF OF INNOCENCE.— Appellant claims that his non-flight is an indication of his innocence. We do not agree. Non-flight is not proof of innocence. The culprit of a crime may choose to remain within the area of the crime scene because he lives there and flight may only raise suspicions against him. No case law exists to support appellant's claim that his non-flight precludes the possibility that he is guilty of the crime. To accept the defense offered by appellant would allow people to commit a crime and avoid liability by simply choosing to stay in the crime scene afterwards.

5. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT A CASE OF.— Appellant's alibi was properly rejected by the lower courts. For alibi to prosper, appellant must not only prove that he was somewhere else when the crime was committed. He must also convincingly demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident. In the instant case, appellant failed to show that it would have been physically impossible for him to be at the scene of the crime on the occasion of the rape.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

TINGA, *J.*:

This Court is called upon to review the Decision[1] rendered by the Court of Appeals on 5 July 2007, which affirmed with modification the Decision[2] of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 dated 14 December 2004 finding Jaime del Castillo guilty of rape.

In an Information dated 26 September 2002, appellant was charged with rape, thus:

That at about 11:00 p.m. of June 29, 2002 at Brgy. Sabang, Calabanga, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation did then and there, wil[l]fully, unlawfully and feloniously has [sic] carnal knowledge of victim AAA,[3] a 16 year old minor against her will, which act of the accused debases, degrades and demeans the intrinsic worth and dignity of the minor as a human being and prejudicial to her development, to her damage.

ACTS CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Regalado E. Maambong and Lucas P. Bersamin.

[2] CA *rollo*, pp. 17-39.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 1.

Upon arraignment, appellant pleaded not guilty to the charge. Trial on the merits ensued.

The evidence for the prosecution is as follows:

Sixteen-year old AAA was living with her parents and siblings in a house at Sabang, Calabanga, Camarines Sur. On 29 June 2002, she was alone in their house as her parents and siblings had gone to Vinzons, Camarines Norte. At around 11:00 o'clock that night, she was already in bed, half-asleep, when suddenly, turning on her side, she felt someone poke her neck with the tip of a spoon. She was able to identify the man holding the spoon as appellant through the light coming from the neighbor's house. She tried to fight back but appellant punched her on the face. Appellant then removed AAA's dress and pulled down her gartered shorts. AAA fought back again but this time, appellant punched her on the abdomen and removed her panties. Holding AAA's neck tightly, appellant then spread AAA's legs and inserted his penis into her vagina.

After committing the dastardly act, appellant told AAA that he would take her to Manila to make her happy. When AAA hinted her refusal, appellant slapped her on the left cheek. Appellant then started to put on his clothes and ordered AAA to turn her back, threatening to stab AAA if she faced him. After appellant had ran outside and away from the house, AAA proceeded to the house of a certain Ate Sharon.[5]

On 30 June 2002, AAA was fetched by her aunt, BBB,[6] to whom she related her ordeal. After relating the whole incident to BBB, they went to the *barangay* captain to report the rape but were told to go directly to the police station of Calabanga. After narrating the incident to the police, they went to the hospital where AAA was examined by Dr. Ma. Agnes Ali. [7] The results of the examination are contained in the medico-legal report which states:

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[5] TSN, 8 April 2003, pp. 4-11.

[6] Name of aunt is withheld. *Supra* note 2.

[7] TSN, 4 April 2003, pp. 3-4.

PPE:

Hematoma on the right cheek.
Abrasions on the neck, left side

External Genitalia:

Well distributed pubic hair
Hematoma noted on the perineal area
Fresh lacerations, hymenal at 4, 8, 10 and 12 o'clock positions
Introitus admits 1 finger with ease
(+) vaginal bleeding (4th day of menses)[8]

Appellant set up the defense of alibi. He claimed that at 11:00 p.m. on 29 June 2002, he was at the wedding celebration of Edgar (Egay) Balderama's daughter and that he was already there as early as 10:00 a.m. as he assisted in the wedding preparations and in serving food to the guests. The wedding party allegedly ended at about 7:00 p.m. but he was supposedly invited by Egay to a drinking spree. He recounted that he left Egay's house shortly after 12:00 a.m. and arrived at his aunt's house twenty minutes later. According to him, he went to sleep after having his dinner and found himself already handcuffed when he woke in the morning.[9]

Egay corroborated the alibi that on 29 June 2002, appellant was in attendance at the wedding celebration of his daughter from 10:00 a.m. to 12:00 a.m.[10] Ronald Vargas (Vargas), a friend of appellant's, also testified that both appellant and himself rendered assistance to Egay's family during the wedding celeberations on 29 June 2002, and that they were also together at the drinking session that night which lasted until 12:00 a.m.[11]

Arnel Rosco (Arnel) was presented to rebut the testimonies of Egay and Vargas. He stated that on 29 June 2002, he was

[8] Records, p. 5.

[9] TSN, 11 February 2004, pp. 3-6.

[10] TSN, 8 June 2004, pp. 4-5.

[11] TSN, 9 December 2003, pp. 4-5.

on a boat docked at the side of the bridge when he saw appellant pass by in front of him. Arnel estimated the time to be 11:00 p.m. because after the said encounter, he immediately went to the house of his sibling and checked the time on the wall clock.[12]

On 14 December 2004, the trial court rendered judgment finding appellant guilty beyond reasonable doubt of rape. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, accused Jaime del Castillo is found guilty of the crime of rape as charged. He is hereby sentenced to suffer the penalty of *reclusion perpetua*. Accused is likewise ordered to pay the private complainant [AAA] the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages and to pay the cost. He is likewise meted the accessory penalties as provided for under Article 41 of the Revised Penal Code.
>
> Considering that the accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for in Article 29 of the Revised Penal Code.
>
> SO ORDERED.[13]

The trial court found the testimony of the victim to be credible, and disregarded appellant's defenses of alibi and denial.

The trial court pointed out that the veracity of the rape accusation was manifested by the following facts: (1) the spontaneous identification of appellant as the one who raped her; (2) the immediate revelation of her predicament to her aunt the following day; (3) the immediate reporting of the incident to the *barangay* captain; (4) the immediate reporting thereof to the police; (5) the immediate submission to a medical examination; and (6) the corroboration between finding of the medico-legal expert and AAA's testimony.[14]

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[12] TSN, 23 June 2004, pp. 3-5.

[13] CA *rollo*, p. 39.

[14] *Id.* at 33.

The case was directly elevated to this Court for automatic review. However, pursuant to our decision in *People v. Mateo*,[15] this case was transferred to the Court of Appeals which affirmed with modification the decision of the trial court, thus:

> WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated December 14, 2004 of the RTC of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. RTC-02-744 is AFFIRMED with MODIFICATION further ordering accused-appellant to pay complainant exemplary damages in the amount of ₱25,000.00 in addition to the award of ₱50,000.00 in civil indemnity and ₱50,000.00 moral damages.[16]

Appellant filed a notice of appeal on 18 July 2007.[17]

In the Resolution of 12 March 2008, we accepted the appeal and ordered the respective parties to file their supplemental briefs.[18] Both appellant and the Office of the Solicitor General (OSG) manifested that they would adopt their briefs previously filed before the appellate court.[19] Thereafter, the case was deemed submitted for decision.

Appellant maintains his innocence and casts doubt on AAA's credibility because of the alleged inconsistencies in her testimony.

In a prosecution for rape, the victim's credibility becomes the single most important issue. For, when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[20] In this case, the test of credibility of the rape victim was more than sufficiently met.

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[15] G.R. Nos. 147678-87, 7 July 2004, 464 SCRA 640.

[16] *Rollo*, p. 11.

[17] *Id.* at 12.

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

[19] *Id.* at 20-23; 28-30.

[20] *People v. Capareda*, G.R. No. 128363, 27 May 2004, 429 SCRA 301, 323; *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 516.

AAA's account of the rape was spontaneous, categorical and detailed.[21] As observed by the trial court, she testified in a straightforward manner on the rape incident from its start until its consummation.[22]

Moreover, the trial court noted that the inconsistencies adverted to by appellant were "not that substantial which would lead to discredit her testimony."[23] AAA's apparent conflicting testimonies with respect to the order of injuries inflicted on her, as well as the time she claimed she told a friend about her plight are not material to the identification of appellant as the perpetrator. The failure of a witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken his or her credibility because it erases any suspicion of a coached or rehearsed testimony.[24]

Appellant argues that it was improbable for AAA to identify the perpetrator because the house was without electricity and that it was dark. We are not persuaded. As correctly observed by the Office of the Solicitor General (OSG), AAA testified that appellant's face was illuminated by the light coming from the neighbor's house. Besides, AAA was familiar with appellant as the latter had been known to her for quite some time.[25]

Furthermore, while it is true that AAA was lying down and thus could not have seen the face of her assailant at the first instance, she nevertheless was able to identify him when the latter mounted her.[26] Appellant's contention that AAA could not have seen the face of her assailant as she admitted that she never glanced at him after the assault was consummated,

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[21] TSN, 8 April 2003, pp. 4-10.

[22] CA *rollo*, p. 78.

[23] *Id.*

[24] *Rivera v. People*, G.R. No. 138553, 30 June 2005, 462 SCRA 350, 359-360.

[24] TSN, 8 April 2003, p. 6.

[25] *Id.* at 5.

[26] *Id.* at 5.

should likewise fail because at the time appellant supposedly ordered AAA to turn her back on him, AAA had already seen and identified his face and the rape had already been consummated.

Appellant also questions the failure of AAA to resist the alleged advances considering that the latter is taller and bigger than him.[27] Against this question, the OSG argues that appellant, a male, is more powerful than AAA in terms of physical strength despite the fact that they are of the same height.[28] It bears stressing that the absence of struggle on the part of the rape victim does not necessarily negate the commission of the offense. Failure to shout for help or fight back cannot be equated to voluntary submission to the criminal intent of the accused. It should be remembered that AAA was first threatened by appellant with a spoon which the latter poked at her neck. Fear, in lieu of force or violence, is subjective. Addressed to the mind of the victim of rape, its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the commission of the crime. In addition, as the Court has repeatedly observed, people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response that can be expected from those who are confronted with a strange, startling or frightening experience.[29]

Appellant claims that his non-flight is an indication of his innocence. We do not agree. Non-flight is not proof of innocence. The culprit of a crime may choose to remain within the area of the crime scene because he lives there and flight may only raise suspicions against him. No case law exists to support appellant's claim that his non-flight precludes the possibility that he is guilty of the crime. To accept the defense offered

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[27] CA *rollo*, p. 55.

[28] *Id.* at 99.

[29] *People v. Lustre*, 386 Phil. 390, 397-398 (2000).

by appellant would allow people to commit a crime and avoid liability by simply choosing to stay in the crime scene afterwards.[30]

Appellant's alibi was properly rejected by the lower courts. For alibi to prosper, appellant must not only prove that he was somewhere else when the crime was committed. He must also convincingly demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident.[31] In the instant case, appellant failed to show that it would have been physically impossible for him to be at the scene of the crime on the occasion of the rape.

All told, there is no cogent reason to deviate from the jurisprudential precept that findings of the trial court on the credibility of witnesses and their testimonies are accorded with great respect.

As a final point, the Court observes that the appellate court erred in awarding exemplary damages. There is no showing that any aggravating or qualifying circumstance attended the commission of the rape; hence, the award of exemplary damages has no factual and legal basis.[32]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals finding appellant Jaime del Castillo guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED,* with the *MODIFICATION* that appellant is ordered to pay AAA (to be identified through the Information) ₱50,000.00 as civil indemnity and, in addition, ₱50,000.00 as moral damages. The award of ₱25,000.00 as exemplary damages is *DELETED.*

SO ORDERED.

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

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[30] *People v. Sumalinog, Jr.*, 466 Phil. 637, 652 (2004).

[31] *People v. Carpio,* G.R. No. 170840, 29 November 2006, 508 SCRA 604, 627.

[32] *People v. Layoso,* 443 Phil. 827, 840 (2003).

THIRD DIVISION

[G.R. No. 181599. August 20, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALVADOR DUMLAO *y* AGLIAM, *alias* "PANDORA",** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ELEMENTS OF ILLEGAL SALE OF DANGEROUS DRUGS, ESTABLISHED.— To sustain a conviction under this provision, the prosecution needs to establish sufficiently the identity of the buyer, seller, object and consideration; and, the delivery of the thing sold and the payment thereof. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence. The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods. In the instant case, the prosecution positively identified appellant as the seller of the substance which was found to be methamphetamine hydrochloride, a dangerous drug. Appellant sold the drug to the police officer who acted as buyer for a sum of ₱200.00. The heat-sealed transparent plastic sachet containing white crystalline substance presented before the trial court as Exhibit "B" was positively identified by PO1 Natividad as the *shabu* sold and delivered to him by appellant. The same heat-sealed transparent plastic sachet of white crystalline yielded positive for *shabu* as shown by Chemistry Report No. D-303-2002 dated October 30, 2002 prepared by Emelda Besarra-Roderos, PNP Forensic Chemist. The non-presentation of pre-operation orders and post operation report is not fatal to the cause of the prosecution, because they are not indispensable

in a buy-bust operation. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense; to wit: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court evidence of *corpus delicti*.

2. REMEDIAL LAW; EVIDENCE; DENIAL AS A DEFENSE; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE WITNESSES.— Appellant's defense of denial is unavailing. He was caught in *flagrante delicto* in a legitimate entrapment operation and was positively identified by the police officers who conducted the operation. Mere denial cannot prevail over the positive testimony of a witness; it is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.

3. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF POLICE OFFICERS IN CASES INVOLVING VIOLATIONS OF DANGEROUS DRUGS ACT GIVEN CREDENCE.— In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.

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 is an appeal from the September 17, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR No. 02392, which affirmed the January 12, 2004 Decision[2] of the Regional Trial Court of Urdaneta City, Branch 46, finding appellant Salvador Dumlao guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act 9165, or the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 and the costs.

On March 5, 2003, an Information[3] was filed charging appellant with the crime of illegal sale of dangerous drugs, the accusatory portion of which reads as follows:

> That on or about 5:00 o clock in the afternoon of October 29, 2002, at Brgy. Macalong, Asingan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously *sell one (1) heat-sealed transparent plastic bag, containing Methamphetamine Hydrochloride (SHABU) a dangerous drug, weighing 0.07 gram*.
>
> CONTRARY to Republic Act 9165, otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

Appellant pleaded "not guilty" when arraigned.

During pre-trial conference, the parties stipulated on the identity of appellant and his lack of authority to possess or sell *shabu*; that the sachet containing some substance that was recovered from appellant was brought to the PNP Crime Laboratory and was found to be methamphetamine hydrochloride, a dangerous drug.[4]

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[1] *Rollo*, pp. 4-12; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin.

[2] CA *rollo*, pp. 84-92; penned by Judge Tita Rodriguez-Villarin.

[3] *Id.* at 8.

[4] *Id.* at 16.

Trial on the merits thereafter ensued.

The facts as found by the trial court and affirmed by the Court of Appeals are as follows:

The evidences of the prosecution and the defense are in harmony as to the fact that on October 29, 2002 the accused was arrested by members of PNP Asingan, Pangasinan and was detained thereafter. There is likewise no conflict on the following: Identity of the accused as charged in the information; The *shabu* in question was brought to the PNP Crime Laboratory upon a letter request of the Chief of Police of Asingan, Pangasinan; and the PNP Crime Laboratory examined the *shabu* and the same was found to be positive to the test of methamphetamine hydrochloride, a dangerous drug. These matters were admitted by the defense during the pre-trial conference. The conflict lies on how and why the accused was arrested and detained.

The prosecution claims that the Asingan Police Station, after a previous surveillance confirming the illegal activities of the accused of selling *shabu*, planned and carried out a buy-bust operation on October 29, 2002. SPO1 Natividad, who was designated as buyer, went to the house of the accused accompanied by two assets. Another police officer, PO2 Manuel B. Abella, positioned himself few meters away from the accused's house as back-up. After some preliminary talk and introduction, SPO1 Natividad handed to the accused two 100-peso bills, which were earlier given by the Chief of Police to be used in the buy-bust operation. The accused left thereafter. When he returned, the accused delivered the *shabu* to Natividad. Thereupon, the accused was arrested.

On the other hand, the accused who was the lone defense witness, claims that in the afternoon of October 29, 2002 he was visited by Jun-jun Castillo and a companion. After talking to them, during which he also served snacks, he accompanied them to the road. Then he sat down on a bench at the side of the road where a person was already seated. Jun-jun Castillo, who crossed to the other side of the road, shouted "arrest him." And the accused was immediately arrested by the person seated beside him, whom he later came to know as Police Officer Natividad. The accused was bodily searched but nothing was taken from him. At the police station, he was again bodily searched and nothing was found. The accused came to know

only the reason of his arrest when *Brgy*. Capt. Mangosong arrived and informed him he was arrested for selling *shabu* which is not true.[5]

The trial court found the prosecution's version more credible and accordingly found appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds herein accused SALVADOR DUMLAO *Y* AGLIAM *alias* "Pandora" GUILTY beyond reasonable doubt of Violation of Section 5 of Republic Act No. 9165 (Illegal Sale of Dangerous Drug) and hereby imposes penalty of life imprisonment. The accused is likewise ordered to pay a fine of ₱500,000.00 and the costs.

SO ORDERED.[6]

Appellant filed an appeal alleging that the trial court erred in giving credence to the testimony of the arresting officers; and that the pre-operation orders and post operation reports regarding the buy-bust operation should have been presented in order to prove that the operation was validly conducted.

Moreover, appellant argued that the prosecution failed to show that the qualitative examination of the specimen allegedly recovered from him was done and completed; that if the testimony of police officer Natividad that he gave the marked money to appellant during the entrapment operation is to be believed, then the police officers could not have presented the same in court during trial as it was with the appellant; and that Natividad was unsure whether he gave the money to appellant before or after receiving the plastic sachet.

On September 17, 2007, the Court of Appeals rendered the assailed Decision, disposing thus:

WHEREFORE, premises considered, the appeal is hereby DENIED and the assailed Decision dated January 12, 2004 rendered by the

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[5] *Id.* at 22-23.

[6] *Id.* at 24.

Regional Trial Court (RTC) of Urdaneta City, Branch 46, convicting accused-appellant in Criminal Case No. U-12462 is AFFIRMED.

SO ORDERED.[7]

The appellate court held that the testimonies of the police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly; that the non-presentation of the pre-operation orders and post-operation results cannot exculpate appellant from criminal liability because the same do not affect the legality of the buy-bust operation; that the finding of Forensic Chemist Bessara that the substance recovered from appellant was "*shabu*" has not been overcome by convincing evidence and enjoys the presumption of regularity; and that the alleged inconsistencies in Natividad's testimony refer to minor details which did not affect the substance of the testimony.

Hence the instant petition.

On April 9, 2008, the Court directed the parties to file their supplemental briefs, if they so desire, within 30 days from notice. On June 5, 2008, the Office of the Solicitor General manifested that it is no longer filing a supplemental brief. To date, appellant has not filed his supplemental brief; he is therefore deemed to have waived filing the same. Consequently, the case is deemed submitted for resolution.

The petition lacks merit.

The pertinent portion of Sec. 5, Art. II of Republic Act 9165 provides:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell,

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[7] *Rollo*, p. 11.

trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

In the instant case, appellant is charged with selling "*shabu*," which is a dangerous drug. Section 3(ii), Art. I of Republic Act 9165 defines "selling" as "any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration."

To sustain a conviction under this provision, the prosecution needs to establish sufficiently the identity of the buyer, seller, object and consideration; and, the delivery of the thing sold and the payment thereof. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence.[8] The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.[9] Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[10]

In the instant case, the prosecution positively identified appellant as the seller of the substance which was found to be methamphetamine hydrochloride, a dangerous drug. Appellant sold the drug to the police officer who acted as buyer for a sum of ₱200.00.

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[8] *People v. Villanueva*, G.R. No. 172116, October 30, 2006, 506 SCRA 280, 287.

[9] *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 579.

[10] *Id.* at 579-580.

The heat-sealed transparent plastic sachet containing white crystalline substance presented before the trial court as Exhibit "B" was positively identified by PO1 Natividad as the *shabu* sold and delivered to him by appellant. The same heat-sealed transparent plastic sachet of white crystalline yielded positive for *shabu* as shown by Chemistry Report No. D-303-2002 dated October 30, 2002 prepared by Emelda Besarra-Roderos, PNP Forensic Chemist.

Appellant's defense of denial is unavailing. He was caught in *flagrante delicto* in a legitimate entrapment operation and was positively identified by the police officers who conducted the operation. Mere denial cannot prevail over the positive testimony of a witness; it is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.[11]

As to the alleged inconsistencies in the testimony of PO1 Natividad, the same refer to minor and trivial matters which serve to strengthen, rather than destroy, the credibility of a witness.[12]

Moreover, the non-presentation of pre-operation orders and post operation report is not fatal to the cause of the prosecution, because they are not indispensable in a buy-bust operation. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense; to wit: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal

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[11] *People v. Torres*, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 611-612.

[12] *Lapuz v. People*, G.R. No. 150050, June 17, 2004, 432 SCRA 443, 448.

sale of dangerous drugs and presented in court evidence of *corpus delicti*.[13]

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.[14]

WHEREFORE, the petition is *DENIED*. The September 17, 2007 Decision of the Court of Appeals in CA-G.R. CR No. 02392, affirming the Decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellant Salvador Dumlao guilty of violation of Section 5, Article II of Republic Act 9165, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 and costs, is *AFFIRMED*.

SO ORDERED.

Quisumbing,[*] *Austria-Martinez, Chico-Nazario,* and *Reyes, JJ.,* concur.

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[13] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 197-198.

[14] *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 522-523.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

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